

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO.4836 OF 2018
ALONGWITH
CIVIL APPLICATION (ST) NO.26801 OF 2018
IN
SECOND APPEAL (ST) NO.4836 OF 2018**

Shri Gautam Ganpat Sutar
(Since deceased through His Legal Heirs)
a) Shri Rajkumar Gautam Sutar and Ors.Appellants

Versus

Sharada w/o Shankar Sutar and Others Respondents

Mr. Prabhakar Jadhav for the Applicants.
Mr. Prasad Kulkarni for Respondent No.1.
Mr. Veerdhawal P. Kakade for Respondent Nos.3A to 3E.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 10, 2020

P.C.:-

1] This appeal is against the concurrent findings by original Defendant No.1. The learned Counsel for the Appellants/original Defendant No.1 would urge that following question of law warrants consideration:-

“Whether both the Courts below committed an error apparent on the face of record in

discarding theory of oral partition which was effected by deceased Ganpat in 1987?”

2] The learned Counsel for the Appellants so as to establish his case of oral partition by Ganpat, a common ancestor, has invited attention of this court to the oral evidence of Gautam, original Defendant No.1. According to him, from his testimony, Courts below should have inferred that there was partition effected in 1987 by Ganpat.

3] With the assistance of learned Counsel, I have gone through the observations of both the Courts below on the issue of oral partition which was claimed to have been effected by deceased Ganpat in 1987.

4] Upon appreciation of the testimony of original Defendant No.1 i.e. predecessor of present Appellants, what is noticed is, onus on the present Appellants was not discharged by proving oral partition. Fact remains that deceased Defendant No.1 in his testimony has referred to Village Panchayat before whom deceased Ganpat, common ancestor, effected oral partition of moveables and immovables. But for testimony of Gautam, no independent witness is examined by the

Defendants/Appellants in support of the said claim, so as to prove factum of oral partition.

5] Even if for sake of arguments factum of oral partition is accepted, same was never acted upon as no revenue entries to that effect were effected, which prevailed before both the Courts below to infer that Appellants/Defendants have failed to establish their claim of oral partition.

6] Apart from above, I am informed that decree for partition in part is already executed.

7] In view of above, no substantial question of law is involved which warrants interference in this Second Appeal. Second Appeal fails and same stands dismissed. As a consequence, Civil Application taken out therein does not survive and same is also disposed of.

(NITIN W. SAMBRE, J.)