

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.57 OF 2018
ALONGWITH
CIVIL APPLICATION (ST) NO.31534 OF 2017
IN
SECOND APPEAL NO.57 OF 2018**

Ramchandra Aba Zure
since deceased through legal heirs
1a. Rajakka Ramchandra Zure & Ors.

.....Appellants.

V/s

Ganpat Aba Zure and Ors.

..... Respondents.

Mr. Sandesh D. Patil i/b Divya A. Pawar Patil for the Appellants.

Mr. Umesh R. Mankapure for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 27, 2020

P.C.:-

1] Respondent filed Regular Civil Suit No.83 of 1994 for partition, which came to be decreed on 16/08/2005. Present Appellant/original Defendant No.1 preferred Regular Civil Appeal No.210 of 2005, which though came to be partly allowed, theory of partition was negated. As such, this second appeal.

2] The learned Counsel Mr. Patil appearing for Appellant/original Defendant No.1 would urge that case of the Appellant rests on Mutation Entry No.493 which was certified on 31/8/1992. Contentions are, Mutation Entry justifies defence setup by Appellant as that of existing partition of property. As such, question of law which is sought to be agitated is, “whether both the Courts below have committed an error apparent on the face of record in not accepting theory of partition?”

3] Apart from concurrent findings recorded by both the courts below based on discharging of onus by Respondents/Plaintiffs by proving that property is ancestral property, both the courts below have rightly negated claim of the Appellant/original Defendant No.1 that there was partition in 1982.

4] Mutation Entry No.493 was effected based on intimation given by the original Defendant No.1 in 1982 which was in his capacity as Manager of Hindu undivided Family. Once Appellant/original Defendant No.1 claims that there was partition in 1982, burden is on the Appellant/original Defendant No.1 to prove the same which he has

failed to. That being so, in my opinion, no substantial question of law is involved in the present second appeal against concurrent findings. Second appeal fails and same stands dismissed.

5] In view of disposal of Second Appeal, Civil Application taken out therein does not survive and same stands disposed of.

(NITIN W. SAMBRE, J.)