

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**SECOND APPEAL NO.524 OF 2017
WITH
CIVIL APPLICATION NO.10010 OF 2017
IN SA/524/2017**

MANOHAR S/O IRAPPA SARKALE
VERSUS
KISHAN S/O IRAPPA SARKALE AND OTHERS

.....
Advocate for Appellate : Mr. N. D. Kendre
Advocate for Respondents No.1, 2/3 : Mr. R. K. Ashtekar
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 25-08-2021.

ORDER :

1. Present second appeal is filed by the original plaintiff challenging the Judgment and decree passed in Regular Civil Appeal No.72 of 2015 by learned District Judge-4, Latur on 25-11-2016 thereby partly allowing the appeal filed by the original defendants and modifying the decree passed in Regular Civil Suit No.119 of 2007 by learned Joint Civil Judge, Junior Division, Chakur on 04-04-2015.
2. Heard learned Advocate Mr. N. D. Kendre for appellant and learned Advocate Mr. R. K. Ashtekar for respondents No.1, 2/3.
3. It is to be noted that the present appellant had filed the suit for

partition and separate possession. It was a specific case of the plaintiff that he and defendants had jointly purchased property old Survey No.69 i.e. new Gut No.255 admeasuring 80 feet East-West and 30 feet South-North in the name of defendants No.1 and 2 from one Dnyanoba Sadaba Chate through registered sale deed No.685/1998. Thereafter, the said plot has been given House No.1067 i.e. City Survey No.414. Plaintiff and defendants are having ancestral House No.505 in the name of their father. After the death of father, it was mutated in the name of defendants No.1 and 2. Plaintiff claimed that he is having 1/4th share in the same and sought partition. However, further, he had contended that he purchased property No.239 in village Chapoli and it is his self-acquired property. Defendants have no concern over the same. Defendants in their written statement denied the fact that City Survey No.414 is the Joint Family Property of them and the plaintiff.

4. The learned Trial Judge held that the suit properties are the joint family property and ancestral property respectively and, therefore, it was declared that plaintiff, defendants No.1 and 4 have 1/4th share each whereas defendants No.2/1 to 2/4 have 1/16th share each in the property bearing No.1067 and 505 situated at

village Chapoli Tq. Chakur Dist. Latur.

5. In the appeal filed by the original defendants, the First Appellate Court has held that the suit plot is not joint family property, however, suit house No.505 is the ancestral property and, therefore, plaintiff, defendants No.1, 2/1 to 2/4 collectively have 3/10th share each whereas defendant No.4 has 1/10th share in the same.

6. Learned Advocate for the appellant submitted that the First Appellate Court ought not to have interfered with the Judgment and decree passed by the learned lower Court in respect of suit plot No.1067 as it was the property purchased out of the joint family income. There was no evidence led by the defendants to show that prior to the purchase of that property, there was separation between them, therefore, the substantial question of law in respect of the said property is arising.

7. At the outset, it is to be noted that even the plaintiff had come with a case that he himself had acquired house No.239 at village Chapoli by executing a registered sale deed in his favour. He has not included that property in the hotchpot for the aforesaid reason.

That means, if he can hold separate property/self-acquired property then defendants No.1 and 2 can also equally acquire the immovable property. The learned First Appellate Court has correctly assessed the fact that the plaintiff has not led any evidence to show that he had contributed towards the joint family funds before acquisition of the said property. He has not given any reason as to why the sale deed could be examined in the name of defendants No.1 and 2 and he would have been left out of the consideration. The proof beyond pleadings by the plaintiff has also been considered by the First Appellate Court. Per contra, defendants No.1 and 2 had examined the witnesses who were present at the time of execution of the said sale deed in their favour. Those witnesses have also categorically stated that the amount of consideration was given by defendants No.1 and 2. It has not been brought by the plaintiff on record that defendants No.1 and 2 had no independent source of income to purchase any property. Under such circumstances, when the documentary, as well as oral evidence, has been correctly appreciated, it could not give rise to any substantial question of law.

8. As against this, House property No.505 being the ancestral property has been rightly held liable to be partitioned and

accordingly the partition has been directed to be effected. Therefore, no substantial question of law as contemplated under Section 100 of the Code of Civil Procedure is arising in this case. The second appeal, therefore, stands dismissed at the threshold. Pending Civil Application also stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

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GAWADE
VIRENDRA J
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