

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.623 OF 2018
with
CIVIL APPLICATION NO.9371 OF 2018**

Dada s/o Tangaji Wani

**= APPELLANT
(Orig.Plaintiff)**

VERSUS

1) Bhagaji s/o Tangaji Wani & Ors.

**= RESPONDENTS
(Orig.Defendants)**

Mr.MG Kolse-Patil,Advocate for Appellant;

Mr.KD Jadhav,Advocate for Respondent Nos.2,3, 9 to 11.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 5th August, 2021.

PER COURT :-

1. Present appeal has been filed by original plaintiff, challenging concurrent judgment and decree. He had filed Regular Civil Suit No. 145/2007 before Joint Civil Judge, Junior Division, Sillod, District Aurangabad for partition and separate possession. The said suit came to be dismissed on 26.8.2015. He had challenged the said decree in Regular Civil Appeal No.210/2015. The appeal was heard by learned District Judge-1, Aurangabad and it was dismissed on 4.12.2017. Hence, the present Second Appeal.

2. Heard learned Advocates appearing for the respective parties. In order to cut short it can be stated that both of them have made submissions in support of their respective contentions.

3. It has been vehemently submitted on behalf of the appellant that both the Courts below have not considered the evidence as well as law points properly. Both the Courts have mis-read the evidence by ignoring the provisions of The Hindu Succession Act, 1956. The family arrangement and the previous partition ought to have been properly considered in view of the principles laid down in the case of Anar Devi Vs. Parmeshwari Devi – 2006 AIR (SCW) 5063. Only one share-holder is not entitled to alienate the joint family property more than his share without there being partition by metes and bounds. Both the Courts below have wrongly considered that the 7/12 extracts show different entries and it is a proof for previous partition. In fact, the 7/12 extracts are prepared for physical purposes and it cannot take shape as proof for partition. Both the Courts below have

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also not considered the provisions of Sections 8,9, and 31 of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter to be referred as the said Act). Both the Courts below committed an error in holding that the suit is barred by limitation to get declaration regarding the sale-deed as not binding on the share of the plaintiff.

4. Per contra, learned Advocate appearing for Respondent Nos.2, 3, 9 to 11, supported the reasons given by both the Courts below. It was submitted that the respondents had filed sufficient evidence to show that there was previous partition between the parties. The plaintiff never objected many sale transactions, those were taken place between 1999 to 2010. When there was the proof regarding the previous partition, the partition could not have been re-opened and, therefore, both the Courts were justified in dismissing the claim of the plaintiff.

5. At the outset, it is to be noted that both the Courts below have considered the

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documentary evidence, especially the effect of long standing entries recorded in the 7/12 extracts and also the instances of sale, that had taken place during the period 1999 to 2010 by original deft.Nos.2 and 3. Those transactions were never objected by the plaintiff. This silence on the part of the plaintiff also speaks for itself and it could have been definitely taken as *prima facie* indication of the previous partition. Further, when the family arrangement had taken place and members of the family were enjoying the property accordingly, and then there are acts of ownership, not objected by other co-owners or members, as the case may be, then those instances can be definitely taken as proof of partition. It can be seen that deft.No.2 separately and deft.No.3 separately had disposed of substantial piece of land. The plaintiff had knowledge about the same; yet he did not resist. Further, it is an admitted fact by the plaintiff that 13 Ares land from Gut No.147 is in possession of all the six brothers. Therefore, even if there is no direct document of partition; yet when by act of oral partition is allowed, then it can be proved through other supportive

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documentary evidence and that documentary evidence has been produced in this case.

6. Both the Courts below have considered the documentary evidence properly. So also the law points involved in the case have been properly considered. No substantial question of law, as contemplated under Section 100 CPC, is arising in this case, requiring admission of the Second Appeal. Hence, the Second Appeal stands dismissed. Pending civil application, if any, stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV