

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

**913 SECOND APPEAL NO.174 OF 2021
WITH CA/4237/2021 IN SA/174/2021**

SANDIP ALIAS PRAMOD TULSHIRAM SHINDE
VERSUS
PARASHRAM NANA SHINDE DECESED LRS. PRATIBHA AND OTHERS

...
Advocate for Appellants : Mr. S. S. Chapalgaonkar
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CORAM : AVINASH G. GHAROTE, J.

DATED : 19th JUNE, 2021.

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PER COURT :

1. Heard Mr. S.S. Chapalgaonkar, learned counsel for the appellant. He contends that the courts below have incorrectly given a finding that there was a partition between the joint family comprising of Manohar, Tulsiram and Parasram, the sons of Nana on 25/07/1961, in which land of Survey No. 62/2, admeasuring 10.5 H, has fallen to the share of Parasram alone. Except for mutation entry no. 1530, there is nothing to demonstrate that a partition was effected.

2. The appellant is defendant no.7 before the trial court. The plaintiffs had filed a suit for declaration and injunction regarding the land of Survey no.62/2, admeasuring 10 acres and 5 R, situated at

village Jeur Kumbhari, Taluka Kopargaon, District Ahmednagar. The suit was based upon a plea, that the aforesaid land was received by the plaintiff, in a partition dated 25/07/1961 and thereafter the entire land was acquired by respondent no.8. In 1977, part of the land admeasuring 4.2 acres, was returned back to the present plaintiff and now, the balance remaining land, was also sought to be returned, whereupon, objections were taken by the defendants claiming share in the property leading to filing of the present suit. The trial court found, that in pursuance to the partition dated 25/07/1961 a mutation was effected in the name of plaintiff alone, and it was the plaintiff from whom defendant no.8, the State Farming Corporation had acquired the entire land. Trial court also found that the return of part of the land admeasuring 4.2 acres in the year 1977 was to the plaintiff alone. All this was never objected to by any of the defendants. However, when the balance land was sought to be returned, the objections were raised.

3. It is pertinent to note as very fairly pointed out by the learned counsel for the appellant, the defendant nos. 3 and 4, in the written statement had admitted that on 25/07/1961, there was indeed a partition. However, certain pleas were raised regarding validity and efficacy of the partition. It was further admitted by these

defendants, that in 1973 again there was a partition of land bearing Survey No. 68/2, admeasuring 10.30 acres and land Survey no. 68/1/b, admeasuring 3 acres was given to the share of the plaintiff, but, the disputed property, was kept joint. In spite of having raised such a plea in the written statement, no evidence was led by them. It is also pertinent to note that the present appellant who was defendant no.7 also did not lead any evidence whatsoever. Both the courts have relied upon the partition dated 25/07/1961, which is evidenced by the mutation entry in favour of the original plaintiff and so also the acquisition of the entire land from the plaintiff as well as return of part of it to the plaintiff and so also by the admission of the defendants no.3 & 4. This is clearly a case of no rebuttal by the defendants. Both the courts have correctly assessed the pleadings as well as evidence led on the basis of documents proved on record and I do not find any substantial question of law arises for determination in the second appeal. Second appeal is, therefore, without any merit and is dismissed. In the circumstances, there shall be no order as to costs. Civil application is disposed of accordingly.

(AVINASH G. GHAROTE, J.)

vsm/-