

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

SECOND APPEAL NO. 187 OF 2021

Gangabai Piraji Nilewad

... Appellant
(Orig. Defendant)

Versus

Sheshrao Bapurao yerewad

... Respondent
(Orig. Plaintiff)

....
Mr. A. N. Patil Barhate, Advocate for the appellant
....

CORAM : R. G. AVACHAT, J.

DATED : 08th APRIL, 2021

PER COURT :-

. Heard learned Advocate for the appellant.

2. The challenge in this Second Appeal is to the judgment and decree dated 24.11.2017 passed by the Court of Civil Judge, Junior Division, Mukhed in Regular Civil Suit No.144 of 2014 and confirmed by judgment and decree dated 25.01.2021 passed in first appeal being Regular Civil Appeal No.2 of 2018. The original defendant has therefore preferred this Second Appeal.

3. Perused the impugned judgments. It was a suit for partition and separate possession of the agricultural land purchased by the appellant and the respondent, jointly under the sale-deed dated 05.12.2008. The appellant/original defendant admitted to have purchased the land, jointly. The learned Advocate for the appellant would, however, submit that the cousin of the original vendor had initiated litigations in respect of the land jointly purchased by the appellant and the respondent under the sale-deed dated 05.12.2008. It was the case of the appellant before both the Courts below and here as well that he has spent a sum of Rs.5,00,000/- (Rupees Five Lakh) for defending the Court proceedings initiated by the cousin of the original vendor. According to the learned Advocate for the appellant, the plaintiff/defendant has to contribute equally towards those expenses. Until the appellant is paid Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand), the plaintiff would not be entitled for her half share in the suit land.

4. Both the Courts below have found the appellant to have failed to make out his case about having spent a sum of Rs.5,00,000/- for defending the litigations initiated by the cousin of the original vendor. Admittedly, the appellant had not filed any

counter claim in this regard. The claim for Rs.2,50,000/- would not be a ground to defeat the claim of the plaintiff/respondent for partition of her share in the suit land. If at all the appellant has really spent some amount for defending the title of the land jointly purchased, it may be a separate cause of action.

5. I have carefully perused the substantial questions of law said to have been arisen in this Second Appeal. I am not in agreement with the learned Advocate for the appellant herein.

Since no substantial question of law arises in this Second Appeal, the appeal stands dismissed.

In view of dismissal of appeal, pending civil application No.4517 of 2021 does not survive, therefore the same is disposed of.

[R. G. AVACHAT, J.]

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