

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.608 OF 2013
WITH CA/10838/2013 IN SA/608/2013

SOPAN DEVIDAS TELE AND OTHERS
VERSUS
SUARNAMALA MURLIDHAR TELE AND OTHERS

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Advocate for appellants : Mr. J. R. Patil.
Advocate for respondent Nos.1 and 2 : Mr. E. S. Murge

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29.09.2021

ORDER :-

. Present appeal has been filed by original defendants. Present respondent Nos.1 and 2 - original plaintiffs had filed Special Civil Suit No.34 of 2003 before the learned Joint Civil Judge Senior Division, Osmanabad for partition, maintenance and keeping charge of the same on the immovable property of the defendants. The said suit came to be partly decreed on 29.12.2009. Present appellants – original defendants had challenged the said judgment and decree before the learned District Court, Osmanabad by filing Regular Civil Appeal No.43 of 2010. The said appeal was heard and dismissed by learned District Judge-1, Osmanabad on 22.03.2013. Hence, this second appeal.

2. Taking into consideration the controversy involved, matter was taken up for final hearing at admission stage. Heard learned Advocate Mr. J. R. Patil for appellants and learned Advocate Mr. E. S. Murge for respondent Nos.1 and 2.

3. It has been vehemently submitted on behalf of appellants that the learned Trial Court as well as learned first Appellate Court have not considered the provisions of Hindu Law properly. Both the Courts below have considered the partition that had taken place earlier between the defendants, but after awarding maintenance to the plaintiffs, charge has been kept on the lands which went to the share of defendants Nos.1 and 3. Plaintiffs can get their share separated only from the share of defendant No.2. Substantial questions of law are arising in this case, as the findings arrived at by the Courts below is perverse to the evidence adduced.

4. Per contra, the learned Advocate appearing for respondent Nos.1 and 2 supported the reasons given by both the Courts below and submitted that on the facts of the case and assessment of evidence adduced, the partition has been directed to be effected, maintenance has been granted and charge has been kept. Plaintiffs are enabled to maintain themselves. No substantial question of law is arising in this

case.

5. At the outset, it is to be noted that the relationship between the parties is not denied. Plaintiff No.1 is the wife and plaintiff No.2 is the daughter of defendant No.2. Defendant No.1 is the father of defendant No.2 and 3. Defendant No.4 is the wife of defendant No.3 and defendant No.5 is stated to be the second wife of defendant No.2.

6. Plaintiffs had contended that agricultural lands bearing Gat No. 18, 19/B from village Dabha, Tal. Kallam, Dist. Osmanabad and Gat No.40B, 49 and 59A at village Shiradhon, Tal. Kallam, Dist. Osmanabad are the ancestral properties of defendants and plaintiffs. Plaintiffs claimed partition and separation of their share, maintenance and marriage expenses of plaintiff No.2. They had also prayed for keeping charge of the maintenance on the suit lands.

7. After considering evidence adduced by both the parties, the learned Trial Judge has come to the conclusion that plaintiff has failed to prove that the suit properties are ancestral properties of the plaintiffs and defendants. It was held that defendants have proved that there was oral partition between defendant No.1 to 3 on 01.01.1979. Mutation entry to that effect has been carried out. Defendant No.3 to 5 have deposed that land Gat No.49 has been purchased from their separate

income. It has been further held that land Gat No.18 and 19/B are still in common and half share from Gat No. 59A has been given to defendant No.2. These findings were not challenged by the respondents/ original plaintiffs.

8. After giving maintenance and partition from Gat No.59A to the plaintiffs, learned Trial Judge has kept the charge of the maintenance on the undivided share of defendant No.2 in Gat Nos.18, 19B and 59A. Important point to be noted is that the plaintiffs had not challenged the rejection of relief of partition in Gat Nos.18 and 19B, though it appears that learned Trial Judge held that defendant No.2 has undivided share in those two lands. The question is, when the said relief is refused and share of defendant No. 2 is not separated from those two lands then whether charge of the maintenance can be kept? Certainly, it could have been kept on separate property of defendant No.2. Plaintiffs cannot now say that intentionally unequal partition has been shown. They had every right to challenge the said decree of the learned Trial Judge in the appeal filed by present appellants. Since they have not taken any step, then the order keeping charge on undivided share does not arise. Hence, to that extent only the decree deserves to be modified. No other substantial question of law is arising in this case. Therefore, following order is passed :-

ORDER

(I) Second Appeal stands partly allowed.

(II) The judgment and decree passed in Special Civil Suit No.34 of 2003 by Civil Judge Senior Division, Osmanabad on 29.12.2009 and the judgment and decree passed in Regular Civil Appeal No.43 of 2010 by District Judge-1, Osmanabad on 22.03.2013 are hereby set aside to the extent of keeping charge of maintenance on land Gat No.18 and 19B situated at village Dabha, Tal. Kallam, Dist. Osmanabad.

(III) Rest of the decree is hereby confirmed.

(IV) Pending civil application stands disposed of.

[SMT. VIBHA KANKANWADI, J.]

scm