

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**Second Appeal No. 476 / 2019
With
Civil Application No. 1165 / 2019**

Aayub Abdul Rahiman Naikwadi & Ors. .. Appellants

Vs.

Ali Niruddin Naikwadi & Ors. .. Respondents

Mr. Dhupad S. Patil i/by Mr. B.G. Ligade, Advocate for Appellant.
Mr. Prasad P. Kulkarni, Advocate for Respondent No.1 and 2.

CORAM : SANDEEP K. SHINDE J.

DATE : 17th MARCH, 2021.

P.C. : -

1. Against, the concurrent findings of fact, the Defendant Nos. 1 to 7 in the Regular Civil Suit No. 56/2014, have preferred this appeal.
2. Appellants – Defendants resisted the suit for partition on two grounds;

- (i) that after the death of Nuroddin in 1983, suit property was partitioned and half therein was given to Abdul Rahiman (Father of the Appellants); it was a oral partition;
- (ii) that, deed of relinquishment executed by Inayatbi (Sister of Appellants' father) in favour of the Plaintiffs, was opposed to law in terms of Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948.

3. In so far as, the first defense is concerned; it may stated, there is no evidence on record to accept the theory of oral partition propounded by the Appellants – Defendants. In fact, the Defendants did not step into the witness box. Both the Courts, rejected this defense and I have no reason to disturb this concurrent finding.

4. In so far as the provision of Section 43 is concerned; it is argued, that rights in the suit land were relinquished by Inayatbi, without first obtaining permission under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 and therefore factum of

relinquishment was void and therefore Courts below ought to have kept the Relinquishment deed, out of consideration while qualifying the share of the appellant in the suit property. However, it may be stated, the Defendants have not challenged the validity of the deeds, either independently or otherwise.

5. In view of the reasons stated above, the appeal does not give rise to substantial question of law. Appeal is dismissed. All Civil Applications therein are disposed of.

(SANDEEP K. SHINDE, J.)