

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 428 OF 2019

Narayan Ganpati Gurav & Anr. .. Appellants
V/s.

Vishnu Ganpati Gurav & Ors. ..Respondents

Mr. Prithviraj Gole i/b Ms. Anusha P. Amin for the Appellants.
Mr. Rahul Patil for Respondent Nos. 1 and 2/1 to 2/5.

CORAM : C.V. BHADANG, J.

RESERVED ON : 11th FEBRUARY, 2021
PRONOUNCED ON : 08th MARCH, 2021

:JUDGMENT:

1. The challenge in this appeal is to the Judgment and Decree dated 18.08.2018 passed by the learned District Judge at Sangli, in Regular Civil Appeal No. 187 of 2014. By the impugned judgment, the appeal filed by the first respondent (original plaintiff) has been partly allowed, thereby decreeing Regular Civil Suit No. 61 of 2013 filed by the first respondent.

2. The brief facts necessary for the disposal of the appeal may be stated thus:

The first respondent filed Regular Civil Suit No. 61 of 2013 against the appellants (defendant nos. 2 and 3) along with late Ramchandra (defendant no.1) and others. The subject matter of the suit happens to be the properties situated at village Deshing and village Haroli Taluka – Kavathe Mahankal District – Sangli. For the sake of convenience, the properties are set out as under (as described in the judgment of the first Appellate Court)

Gat No.	Village	Description	Area
1181	Deshing	A1	2H 11R
1180	Deshing	A2	0H 31R
1353	Deshing	A3	0H 93R
1354	Deshing	A4	1H 5R
1355A	Deshing	A5	1H 62R
442 1/1	Haroli	A6	4H 95R

3. The case made out in the plaint is that the aforesaid properties are the ancestral properties of the plaintiff and defendant Nos. 1 to 3, who are real brothers. The plaintiff had issued a notice dated 20.05.2013 seeking partition of the suit properties after which, the aforesaid suit came to be filed for partition and separate possession. It may be mentioned that Ganpati Gurav is the common ancestor, being the father of the plaintiff and defendant Nos. 1 to 3. Ganpati expired in the year 1961, while his wife Krushnabai expired

in the year 1990. Undisputedly, except plaintiff and defendant Nos. 1 to 3, Ganpati and Krushnabai had no other children.

4. Defendant No.1 (late Ramchandra) filed the written statement admitting the suit claim and stating that he may be granted the share as per law.

5. The appellants, who are the original defendant Nos. 1 to 3 did not file written statement and the suit proceeded without their written statement. Original defendant Nos. 4 to 11 were *ex-parte* before the learned Trial Court. The learned Trial Court framed in all four issues.

6. The plaintiff examined himself and produced 7/12 extract of the suit properties. It appears that as defendant No.1 had admitted suit claim and the others were either proceeded *ex-parte* or without their written statement, there was no cross-examination of the plaintiff.

7. The learned Trial Court found that except land Gat Nos. 1180 (A2) and 1354 (A4), the other lands were the ancestral and the joint family properties, in which the parties had 1/4th share each.

Although, the learned Trial Court found that the plaintiff and the defendant Nos. 1 to 3 were entitled to 1/4th share each in the suit properties, except A2 and A4, the learned Trial Court by the impugned Judgment and Decree dated 29.03.2014 dismissed the suit on the ground that all the ancestral properties were not included in the suit.

8. Feeling aggrieved, the first respondent challenged the same in Regular Civil Appeal No. 187 of 2014 before the learned District Judge at Sangli.

9. The learned District Judge found that except the properties namely Gat No. 1355A (A5) and 442 1/1(A6), the other properties were the ancestral properties. The first Appellate Court therefore, partly allowed the appeal and granted 1/4th share to the plaintiff and defendant Nos. 1 to 3 in the suit property except the properties A5 and A6. Feeling aggrieved, the appellants are before this Court.

10. I have heard the learned counsel for the appellants and the respondent Nos. 1, 2/1 to 2/5. Perused record.

11. It is submitted by the learned counsel for the appellants that the first Appellate Court was in error in interfering in the well reasoned order of the learned Trial Court, including the finding about properties A2 and A4, as the plaintiff had failed to show that they were the ancestral and joint family properties. It is submitted that the plaintiff was not entitled to lead oral evidence contrary to the documentary evidence namely 7/12 extract in respect of the land Gat No. 1180 (Exh.7) and Gat No. 1354 (Exh.9). It is thus, submitted that the first Appellate Court was in error in granting partition of properties Gat Nos. 1180 (A2) and 1354 (A4).

12. The learned counsel for the contesting respondents has supported the impugned judgment. It is submitted that 7/12 extract and the entries therein, which are essentially for fiscal purpose do not confer any title and they are not title documents. It is submitted that the appellants did not contest or lead any evidence, nor sought any such leave in the appeal before the first Appellate Court, where they filed say Exhibit 14. It is submitted that thus, respondents cannot conceivably challenge the impugned Judgment and Decree by the first Appellate Court.

13. I have carefully considered the rival circumstances and the submissions made.

14. The *inter se* relationship between the parties is not in dispute. The record discloses that defendant No.1 filed written statement admitting the suit claim. The present appellants being defendant Nos. 2 and 3 although entered appearance in the suit did not file any written statement or lead evidence. The learned Trial Court excluded the Gat Nos. 1180 (A2) and 1354(A4) principally based on the entries in 7/12 extract. The learned Trial Court found that insofar as the Gat No. 1180 is concerned, 7/12 extract Exhibit-7, while insofar as Gat No. 1354 is concerned, 7/12 extract Exhibit-9 showed that defendant nos. 2, 3, 4 and 5 had 1/4th share each. In my considered view, the learned counsel for the respondents is right that the entries in 7/12 extract are for fiscal purpose and they cannot confer any title.

15. The first Appellate Court noticed that neither there is any case made out, nor any evidence led by the appellants to show that the land Gat Nos. 1180 and 1354 were not the ancestral or joint family properties and they were self acquired properties of the appellants along with others, whose name appears in 7/12 extract. It appears

that before the learned first Appellate Court, the appellants filed a reply (although it is inconceivable that any reply could be filed in the appeal) at Exhibit-14 claiming that even the landed property was partitioned, at the time of partition of the house properties belonging to the joint family, on 04.05.1986. In other words, these defendants for the first time by virtue of the say Exhibit-14, in the appeal, raised a defence about the alleged previous partition, for which there was neither any pleading, nor evidence led before the learned Trial Court.

16. Considering the over all circumstances and the reasoning articulated by the first Appellate Court, I do not find that the finding of fact as recorded by the first Appellate Court suffers from any infirmity.

17. It is also not shown that there were any other properties belonging to the joint family, which were not part of the subject matter of the suit. Thus, the partition granting equal share to the four brothers does not call for interference.

18. Insofar as land Gat Nos. 1355A(A5) and 442 1/1 (A6) are concerned, they are excluded by the first Appellate Court, on the

ground that they are shown to be *Devsthan Inam*-III lands in favour of Ambabai Dev and Maruti Dev. The first Appellate Court had found that the said lands are *Inam* lands on the basis of 7/12 extract Exhibits 10 and 11. In any event, the challenge in the present Second Appeal is only to the extent of the first Appellate Court granting a decree of partition in respect of land Gat Nos. 1180 and 1354, which were excluded by the Trial Court, I do not find that the appeal raises any substantial question of law and the appeal is accordingly dismissed with no order as to costs.

19. A decree be drawn accordingly.

C.V. BHADANG, J.