IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 43 OF 2017

ALONGWITH

CIVIL APPLICATION NO. 83 OF 2017

Shankar Mahadeo alias Mahadu
Jadhav and ors. .....**Appellants**
(Orig. Defendants)

V/s.

Dnyaneshwar Mahadeo alias
Mahadu Jadhav (deceased)
through his Lrs and Ors. ....**Respondents**

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Mr. S.N. Chandrachood, Advocate for the appellants.

Mr. S.V. Sadavarte, Advocate for respondents no.1A, 1B, 1D, 1E and 2.

CORAM : SANDEEP K. SHINDE, J.

<u>Wednesday, 24th March, 2021.</u>

<u>P.C. :</u>

1. Heard learned Counsel for the parties.

2. Appellants-original defendants no.1 to 4 in Regular Civil Suit No. 1516 of 2003, instituted by respondents no.1 and 2 for partition, separate possession and for declaration, have preferred this Appeal.

3. In brief, the facts of the case are; that respondents no.1 and 2 instituted, the suit for partition of the property bearing Survey No. 25/10 admeasuring 72 Ares and decree for declaration that the sale-deeds executed by Mahadu alias Mahadeo Jadhav ("Common Ancestor" of the parties) in favour of appellants no. 2 and 3 (original defendants no.2 and 3 and grand-children of Mahadu) both dated 17th September 1981, were not binding on them. Injunction was also, sought to restrain the defendants, from making any construction on the suit land, as, also to injunct them from creating third party rights therein. It may be stated that Mahadu alias Mahadeo

Jadhav, was father of the plaintiffs and defendants no.1 and 4 and grandfather of defendants no.2 and 3. The plaintiffs would assert and claim, the suit property is a joint family property. It is plaintiff's case that, while partitioning the properties, on 27th May, 1959, suit property was, identified for the benefits and enjoyment of all members of the joint family and on reporting this fact, to revenue authorities, it was translated in Mutation Entry No.1436. However, its effect was not given in the 7/12 extract. It is plaintiff's case that, the Mutation Entry No.1436, evidencing the factum of partition, has not been challenged, either by the plaintiffs or by defendants. It is their case that, the suit property is a joint family property and although it was purchased by Mahadu, in his name, consideration was paid from the income of the joint family. Thus, it's their case that, Mahadu had no independent source of income, other than agricultural income. The plaintiff's pleaded that, somewhere, in October, 2003 the defendants started changing the character of the property by attempting to make a construction, thereon, whereafter they instituted the subject suit.

4. The suit was resisted by the defendants on the grounds that, (i)it was a self-acquired property of Mahadu; (ii) suit was barred by limitation; and (iii)Mutation Entry No.1436 was, false and hollow.

5. Both the Courts rendered a finding of fact that, Mahadu alias Mahadeo Jadhav, had no independent source of income and thus held that, it was a joint family property and rejected the defendant's claim that, it was Mahadu's self-acquired property. While recording this finding, the Courts have relied on the evidence of defendant no.1 who, in his cross-examination had admitted that he had no evidence at his end to show his father had independent, source of income, other than the income from agricultural

lands. Defendant no.1, had also admitted that consideration of the suit property was paid from the agricultural income. Another witness, Narhari Jadhav, had also admitted that, there was no evidence to show that, deceased Mahadev had independent source of income. In consideration of the evidence, both the Courts held that, the defendants could not prove Mahadev's independent source of income. As such, finding on this point is founded on cogent and reliable evidence. Thus, this finding requires no interference.

6. Insofar as the plaintiff's contention that, in partition on 27th May, 1959, suit property was identified for common enjoyment of members and it culminated into Mutation Entry No.1436, is concerned, it may be stated that, Section 157 of the Maharashtra Land Revenue Code provides that an entry in record of rights and certified entry in the register of mutations, shall be presumed to be true-

correct until the contrary is proved or it is substituted by new entry. In this case, admittedly the Mutation Entry has not been substituted by new entry since 1959, neither it was challenged by the defendants. Thus, in absence of any contrary evidence, both the Courts have correctly relied on this mutation entry and oral evidence, to hold, suit property was identified as a common property of family in pursuant to partition effected in May, 1954.

6. Obviously, having established, that the suit property was identified as a common property for benefit of members of family, in terms of partition effected and being translated in revenue records, the sale-deeds executed by Mahadu on 17th September, 1981 in favour of defendants no.2 and 3 were obviously not binding on the plaintiffs.

7. Mr. Chandrachud, learned Counsel for the appellant, vehemently submits that the suit was barred by

limitation since the sale-deeds of 1981, were challenged nearly after 12 years. However, submission is to be rejected. First reason is that, Mutation Entry No.1436 was in force as on the date when the suit was instituted and therefor plaintiffs were not expected to know factum of sale-deed executed by Mahadu in favour of defendants no.2 and 3. Next reason is, when defendants had started making construction over the suit land in October 2003, they would know about the sale-deeds, whereafter they instituted the subject suit.

8. Thus, in consideration of the facts of the case and for the reasons stated, the Appeal does not give rise to any substantial question of law. The Appeal is dismissed.

9. With dismissal of the Appeal, Civil Application No.83/2017 becomes infructous and does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J.)