

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 432 OF 2021****WITH****INTERIM APPLICATION NO. 3802 OF 2021**

Tanaji Rakhama Bodake

... Appellant

V/s.

Ashok Karbhari Bodake & Ors.

... Respondents

Mr.Rajesh Tekale for Appellant.

Mr.PK. Bohade for Respondent No.1.

CORAM : A.S. GADKARI, J.**DATE : 13th December 2021.****PC. :**

1. Appellant-Original Defendant No.1 has filed the present Appeal under Section 100 of the Civil Procedure Code impugning Judgment and Order dated 23rd September 2021 passed by the Extra Joint District Judge, Niphad in Regular Civil Appeal No. 43 of 2016.
2. Heard Mr.Tekale, learned counsel for Appellant and Mr.Bohade, learned counsel for Respondent No.1. Perused record.
3. Record indicates that, Respondents had filed Suit for partition and separate possession of the suit properties, more particularly mentioned in para No.1 of the plaint in Special Civil Suit No. 50 of 2014.

After receipt of summons, the Appellant appeared in the said Suit and filed his written statement. It is the contention of the Appellant that, some of the suit properties were partitioned in the year 1969 and a Mutation Entry No. 1885 has accordingly been recorded by the Revenue Department. That, due to the said partition, area of suit properties has reduced or shrunk. Therefore the Appellant examined himself and a witness by name Shri Popat Kachru Kardak in support of his claim. The Trial Court is pleased to decree the said Suit by its Judgment and Order dated 1st March 2016. The Trial Court has held that the Defendant Nos.1 to 6 in the said Suit are having 1/5 share each in the suit property.

The Regular Civil Appeal No. 43 of 2016 preferred by the Appellant has been dismissed by the First Appellate Court by its impugned Judgment and Order dated 23rd September 2021.

4. Perusal of record indicates that, the Appellant did not produce on record partition deed in support of his contention. He has only relied on Mutation Entry No. 1885 in support of his contention that, partition had taken place in the family members in the year 1969. Record further indicates that, the witness of Appellant, namely, Shri Popat Kachru Kardak though claimed to be present at the time of partition in the year 1969 has not given any details of the partition i.e. date and month etc. of the partition. The said witness appears to be not a reliable witness and has been put forth by the Appellant to

support his case and nothing more. It is an admitted fact on record that, the Appellant is having 1/5 share in the ancestral property along with other co-sharers.

5. In view of the above, I am of the view that, no substantial question of law is involved in the present Appeal.

Perusal of record clearly indicates that, both the Courts below have not committed any error in passing the impugned Judgments and Orders.

6. Appeal being *dehors of merits* is accordingly dismissed.

7. In view of dismissal of Appeal, Interim Application No. 3802 of 2021 does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]

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