

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.453 OF 2018

Gulab Bhana Kambdi,
Aged about 72 years, Occ. Cultivation,
R/o Neri, Gandhi Ward (City),
Tah. Chimur, Dist. Chandrapur.

... Appellant
(Ori. Defendant)

// VERSUS //

Tarabai Waman Madankar,
Aged 64 years, Occ. Household,
R/o Talodhi (B), Govardhan Nagar,
Tah. Nagbhid, Dist. Chandrapur.

... Respondent
(Ori. Plaintiff)

Shri A.R.Wagh, Advocate for Appellant.
Shri N.V. Fulzele, Advocate for the Respondent.

CORAM : ANIL S. KILOR, J.

DATED : 6th DECEMBER, 2021.

ORAL JUDGMENT :

This appeal is arising out of the judgment and decree, dated 16.04.2018 passed by the learned District Judge-2, Warora in Regular Civil Appeal No.39 of 2016, dismissing the appeal and maintaining the judgment and decree passed by the Civil Judge Junior Division, Chimur in Regular Civil Suit No.17 of 2011 dated 05.07.2016, decreeing the suit filed by the plaintiff for partition, separate possession and mesne profits.

2. The brief facts of the present case are as follows: (The parties are referred to as per their status before the trial Court)

The respondent/original plaintiff filed a suit for partition, separate possession and mesne profit and claiming thereby $1/3^{\text{rd}}$ share in the suit properties, which are ancestral properties.

3. It is the case of the plaintiff that after the deaths of father Bhana and mother Sakhubai, the plaintiff and the defendant being legal heirs, both have shares in the suit properties.

4. The defendant opposed the suit on the ground that there was partition in the year 1975, more particularly, on 25.09.1975 and in view of that partition the suit properties are received by him in his share and therefore, the plaintiff has no right in the suit properties and she cannot claim any share in the suit properties.

5. The learned trial Court after considering the oral as well as documentary evidence decreed the suit and held that the plaintiff is entitled to $1/3^{\text{rd}}$ share in the suit properties. Whereas, the defendant is entitled for $2/3^{\text{rd}}$ share in the suit properties.

6. The defendant went in appeal and challenged the judgment and decree passed by the trial Court.

7. The learned lower Appellate Court vide impugned judgment and decree dated 16.04.2018 dismissed the suit and maintained the judgment and decree passed by the trial Court, the said impugned judgment and decree is under challenge in the present appeal.

8. I have heard the learned counsel for the respective parties.

9. This Court on 29.08.2018 framed the following substantial question of law:

“Whether the Courts were justified in discarding the partition deed at Exhibit-56 on the ground that it was un-registered?”

10. Shri Wagh, learned counsel for the appellant submits that both the Courts-below have discarded the partition deed (Exh.56) dated 25.09.1975 and recorded erroneous reason namely that mutation entries subsequent to the partition deed were taken not on the basis of partition, but as successor and legal heirs.

11. It is further submitted that both the Courts-below have wrongly held that the partition deed needs registration and in absence of registration, the partition deed cannot be relied upon.

12. Per contra, Shri Fulzele, learned counsel for the respondent submits that the mutation entries which have been noted and discussed by the both the Courts-below do not speak about any partition deed as claimed by the defendant. Despite the said fact, no explanation has been offered by the defendant in that respect and in absence of any such explanation put-forth by the defendant, both the Courts-below have rightly held that the defendant failed to prove that there was partition in the year 1975.

13. It is submitted that both the Courts-below have given concurrent findings against the defendant and unless any perversity is

pointed out, in the second appeal this Court may not interfere with the same.

14. To consider the rival contentions of the parties, I have gone through the record and also perused the judgments and decree of both the Courts-below.

15. It is revealed that both the Courts-below have considered the documentary evidence, more particularly, revenue entries which speak about shares of the defendant and the plaintiff by way of succession on the death of their father and mother. However, there is no mention of partition dated 25.09.1975.

16. Admittedly, the father of the plaintiff and the defendant died on 18.09.1975 and the alleged partition is of the date 25.09.1975. Whereas, the mutation entries were taken in the year 1978 much after the execution of the alleged partition deed. In none of the mutation entries of the suit properties there is mention of partition deed. Both the Courts-below have held that no explanation has been offered by the defendant for not having mention about the partition deed (Exh.56) in any of the mutation entries.

17. Under the Maharashtra Land Revenue Code, 1966 more particularly Section 151 of the Code, these entries have presumptive value and unless it is rebutted by sufficient and cogent evidence, the Court cannot hold contrary to the said revenue entries, in view of its presumptive value.

18. In that view of the matter, I do not find any perversity in recording the findings by both the Courts-below against the defendant.

19. Having held that the revenue entries possess presumptive value and since the defendant has failed to rebut the presumption, any answer to the argument made by the learned counsel for the appellant as regards registration of the partition deed will not change the fate of the present case.

20. In the circumstances, I answer the substantial question of law in the above terms.

21. Accordingly, the appeal is **dismissed**.

22. No order as to costs.

[ANIL S. KILOR, J.]