

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.174 OF 2022 WITH
CIVIL APPLICATION NO.4836 OF 2022**

Datta Anant @ Anurath Varpe & ors. ... APPELLANTS

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Mrs. M.A. Kulkarni, Advocate for appellants
Mr. S.P. Sonpawale, A.G.P. for respondent No.1 – State
.....

CORAM : R. G. AVACHAT, J.

DATE : 26th JULY, 2022.

PER COURT :

Heard Mrs. Kulkarni, learned counsel for the appellants. It is a case of concurrent findings of facts. It was the suit (Regular Civil Suit No.338/2014) filed by children and wife of the respondent No.3 herein (original defendant No.3) for partition and separate possession of agricultural land Gut No.397, admeasuring 1 Hectar 9 R. Relief of declaration was also sought to the effect that the sale deed executed by the respondent No.3 herein (original defendant No.3) in favour of respondent No.2 (original defendant No.2) is not binding on shares of the plaintiffs (appellants herein).

2. The main contention of the appellants/ plaintiffs is that, the suit land is ancestral/ joint family property. The respondent No.3 did not have authority to sell the same in its entirety, affecting the right, title and interest of the appellants/ plaintiffs. The trial Court dismissed the suit holding the appellants/ plaintiffs to have failed to prove the suit land to be ancestral/ joint family property.

3. The first appellate Court confirmed the said finding of fact. It also found that the suit was collusive between the appellants on one hand and the respondent No.3 on the other.

4. According to learned counsel for the appellants herein, an application under Order 41 Rule 27 of the Code of Civil Procedure was moved, seeking production of certified copy of Mutation Entry No.165 to prove that the suit land was ancestral/ joint family property. The first appellate Court rejected the said application. According to learned counsel, the substantial question of law, therefore, arises in this appeal to the effect that, "When the appellants/ plaintiffs were entitled to adduce additional evidence in view of Order 41 Rule 27 of the Code of Civil Procedure, whether the first appellate Court was justified in dismissing the appeal with rejection of the said application ?".

5. After having perused the judgment of the trial Court and that of the first appellate Court, and in view of the facts and circumstances of the case, this Court finds that no substantial question of law arises in this Second Appeal. It was a collusive suit between the appellants on one hand and the respondent No.3 on the other. The respondent No.2 is none other than the head of one of the Schemes/ Department of the State of Maharashtra (respondent No.1). In short, he was the head of Integrated Tribal Development Project. He i.e. the State Government purchased the suit land way back in 2009 from the respondent No.3 for valuable consideration of Rs.1,83,000/-. The land was purchased for public purpose. Five years thereafter the appellants filed the suit claiming to have right, title and interest in the land sold to the respondent No.2. The respondent No.3 did not contest the suit. Admittedly, the appellants/ plaintiffs, except their oral evidence, did not adduce any evidence in proof of the suit land to be ancestral/ joint family property.

6. The ancestral property means a property inherited by a male Hindu from his father, father's father or father's father's father. The property acquired out of the joint family funds or from income from the ancestral property partakes

character of a joint family property. The property which is thrown into common stock (blending) also becomes a joint family property.

7. Although the first appellate Court did not allow the production of Mutation Entry No.165, it read it in evidence. Without accepting/ admitting the claim of the appellants for production of the said mutation entry, only for the sake of satisfaction of the learned counsel for the appellants herein, if one reads the said mutation entry, it is revealed therefrom that Laxman, father of the respondent No.3 effected partition of the land Gut No.397 among his six sons including the respondent No.3 herein. It is not evident from the said mutation entry whether the land Gut No.397 was the joint family property of Laxman and his six sons or was it their ancestral property. It was submitted by the learned counsel that the land Gut No.397 belonged to Laxman. If Laxman was exclusive owner thereof and he effected partition of the said land among his six sons, the sons would become absolute owners of the land that came to their share. It is, therefore, just difficult to infer the Mutation Entry No.165 is an evidence of the land Gut No.397 to be either ancestral or the joint family property of the appellants and the respondent No.3. These observations have been made only to address the

submissions made by the learned counsel. It is reiterated that, both the Courts below have given a concurrent finding of fact. It was a collusive suit. Mutation Entry No.165 would not be of any assistance to the appellants herein. As such, no substantial question of law does arise in this Second Appeal. The Second Appeal fails. It is dismissed. Consequently, Civil Application also stands dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-