

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

**SECOND APPEAL NO.648 OF 2022
WITH
INTERIM APPLICATION NO.18548 OF 2022**

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Shankar Mahadev Devghare ..Appellant
Versus
Shri. Maruti Vithoba Devghare & Ors. ..Respondents
Ms. Mankunwar Deshmukh, for the Appellant.

CORAM : NITIN W. SAMBRE, J.

DATE : 14th NOVEMBER, 2022

PC.

1. This appeal is by the original plaintiff who has initiated Regular Civil Suit No.45 of 2005 on the file of Civil Judge, Junior Division, Dapoli for removal of encroachment, possession and perpetual injunction. The said suit came to be dismissed on 19th September, 2014. The appeal preferred by the appellant being Regular Civil Appeal No.44 of 2014 also came to be dismissed by the District Judge, Khed on 16th October, 2021. As such, this second appeal.

2. The case of the plaintiff is, the suit property being land Gat No.56 is owned by him along with defendant No.5, namely Amrut who is his real brother. It is claimed that in July, 2002,

defendant No.1 caused encroachment by constructing house No.380. The defendant No.2 in 2004, constructed another house on area of 35 ft. X 25 ft. The other defendants planted trees without there being any consent and as such, suit in question.

3. The suit claim was denied by the respondents/defendants, as it is claimed by them that they are co-owners of the suit property.

4. The Trial Court framed issues at Exh.43 and recorded finding that the appellant/plaintiff has proved that he is owner of the suit property, whereas refused to grant other reliefs in the matter.

5. Counsel for the appellant while trying to make out a case so as to assist this Court in framing question of law would urge that both the Courts below have recorded finding that the appellant and defendant No.5 are owner and in partial possession of the suit property. Hence, the Court below ought to have decreed the suit to the said extent. As such, it is urged that the question of law be framed and appeal be admitted.

6. Since the appellant claimed to be having exclusive ownership over the suit property as against the claim of respondents/defendants in written statement Exh.36 of co-ownership, the burden was on appellant to prove that he is

exclusive owner of the suit property. Based on the revenue entries and other evidence it is held that ownership of the appellant is joint with respondents. Rather the appellant has failed to produce on record evidence so as to substantiate his claim that he is exclusive owner of the property. Merely because the consolidation scheme was not objected by the respondents, that by itself will not confer the ownership right on the appellant. Rather from the evidence available on record, both the Courts below recorded a finding that the appellant is the co-owner. In such an eventuality, it was open for the appellant to seek partition of the suit property.

7. In this background, the claim put forth by the counsel for the appellant about involvement of question of law cannot be accepted. The second appeal sans involvement of any question of law. As such, the second appeal stands dismissed.

8. In view of dismissal of appeal, pending application also stands disposed of.

9. However, this will not preclude the appellant from taking out proceedings for claiming partition to the suit property in accordance with law.

[NITIN W. SAMBRE, J.]