

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 752 OF 2022

Lata Dagadu Shirsath and Ors.	... Appellants
<i>Versus</i>	
Rambhabai Dnyandeo Banage and Ors.	... Respondents
...	
Mr. D.R. Markad – Advocate for Appellants	
....	

CORAM : GAURI GODSE, J.

DATE : 24th February, 2023

PER COURT :

1. This Second Appeal is preferred by defendant nos.4 to 7 for challenging concurrent judgment and decree passed for partition and separate possession.

2. Respondent no.1 had filed Special Civil Suit No.83 of 2018 for partition and separate possession. It was the case of respondent no.1 that one Sonaji Shirsath was original owner of the property and the suit property is the joint family property of the plaintiff and defendants. It was further pleaded that, the respondent no.1 being heir and legal representative of Sonaji Shirsath, she was entitled to claim share in the joint family property. The defendant nos.2, 3 and 9 had appeared in the suit and admitted

the suit claim. Defendant no.1 had also admitted most of the contentions of the plaintiff. The present appellant / defendant no.4 had contested the suit on the ground that, defendant nos.1 to 8 had already sold part of the property to the one Badshah Samsherkhan Pathan and hence, there is no question of partition and separate possession. The Trial Court after examining the oral and the documentary evidence on record has disbelieved the case that any of the property was sold to Badshah Samsherkhan Pathan by defendant nos. 1 to 4. The learned Trial Court recorded the findings that, the suit property was joint family property and plaintiff has 1/8th share in the suit property and thus suit is decreed and plaintiff, defendant nos.1 to 3, 8, 9 and deceased Dagdu and Dnyandeo are held entitled to 1/8th share each. Thus defendant nos.4 to 7 and 10 to 13 were held entitled to the 1/8th share of deceased Dagdu and Dnyandeo respectively.

3. Being aggrieved by the decree for partition and separate possession defendant nos.4 to 8 had preferred Regular Civil Appeal No.146 of 2020. By judgment and decree dated 6th January, 2022 passed by the learned District Judge – 6,

Ahmednagar the appeal is dismissed and the decree by Trial Court is confirmed. Hence, present Second Appeal.

4. Learned counsel for the appellants submitted that, though the suit property is a joint family property, defendant nos.1 and 8 had illegally sold part of the suit property to Badshaha Samsher Khan Pathan and the suit was filed by the plaintiff at the instigation of defendant nos.1 and 2 for getting share. He further submitted that, the issue with respect to transfer of share of defendant nos.1 and 8 in favour of Badshaha Samsher Khan Pathan needs to be considered for the purpose of deciding the suit for partition. He therefore submitted that for consideration of the said issue appeal deserves to be admitted.
5. Perusal of the judgment and order passed by the Trial Court shows that, the specific issue with respect to sale-deed executed by defendant nos.1 and 8 in favour of one Badshaha Samsher Khan Pathan is dealt with by the Trial Court and the case of defendant no.4 is disbelieved. Both the courts on appreciation of evidence have held that the suit property is joint family property. Both the courts have held that property sold to

Badshaha Samsherkhan Pathan was separate property purchased by defendant no.1 from Sonaji. Thus, there is no reason as to why share should be denied to the plaintiff. The first appellate court re-examined the oral as well as documentary evidence on record and confirmed the findings by framing similar points for consideration. Submissions made on behalf of appellants are based on factual aspects, which would require examination facts and re-appreciation of evidence, which is not permissible under Section 100 of the Code of Civil Procedure. The Second Appeal do not raise any question of law. Hence, the Second Appeal is dismissed.

6. In view of the dismissal of the Second Appeal pending Civil Applications, if any, also stand dismissed.

[GAURI GODSE]
JUDGE