

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

SECOND APPEAL NO.609 OF 2019
WITH
CA/13772/2019 IN SA/609/2019
WITH
SECOND APPEAL NO. 610/2019
WITH
CIVIL APPLICATION NO. 13773 OF 2019

Shivaji Bhanudas Mhaske,
Age : 55 Years, Occ. Agriculture
and Service,
R/o. Sonai Taluka Newasa,
Dist. Ahmednagar. ... Appellant

VERSUS

1. Bhagwat Bhanudas Mhaske,
Age : 59 Years, Occ. Agriculture,
2. Raghunath Bhanudas Mhaske,
Age : 64 Years, Occ. Agriculture

Both R/o Sonai Tq. Newasa,
District Ahmednagar ... Respondents

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Advocate for the appellant : Mr. Mobin Shaikh h/f Mr. V.R. Dhorde
Advocate for respondent No.2 : Mr. R. B. Temkar

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CORAM : S. G. MEHARE, J.
DATE : 17.10.2023

ORDER :

1. Heard the learned counsel for the appellant and the learned counsel for the respondent No.2.

2. These two appeals are amongst the brothers. The present appellant had filed a suit for partition about three suit properties. The contesting brother had opposed the suit, contending that the properties were partitioned prior to filing the suit. The defence of the defendant in the suit filed by the present appellant was accepted, and his suit was dismissed. The appeal preferred against the said suit was also dismissed. The brothers of the present appellant had filed a separate suit for partition of the property bearing Block No.2463, admeasuring 2 Hectors 29 R. It was their stand that since the said property was encumbered, all the brothers in an application filed under Section 85 of the Maharashtra Land Revenue Code had clarified that the suit property would be partitioned after the clearance of the encumbrances. On the same stand, they had filed suit for partition of the said land. The present appellant opposed the suit and came up with a case that it was his self-acquired property. The learned trial court in RCS No. 437 of 2005 held that the suit land is his self-acquired property.

3. The present respondents had impugned the said judgment and order before the learned District Judge, Newasa. The learned District Judge, Newasa, reversed the judgment and held that it was a joint family property.

4. The learned counsel for the appellant would submit that the learned District Judge, Newasa, has committed an error in drawing an inference that it was a joint family property. No inference could be drawn when the specific and sufficient evidence to prove the facts were on record. The learned District Judge did not appreciate evidence from a proper perspective and erroneously held that the said land was a joint family property and decreed the suit for partition.

5. The learned counsel for the caveator has submitted that in an application before the Collector under Section 85 of the Maharashtra Land Revenue Code, there were specific terms in the application that the suit property bearing No. 2463 would be partitioned later on as there was an encumbrance. There was no evidence before the Court to prove that the present appellant had an independent source of income; instead, he had no sufficient income to save the money. He was dependent on the joint family property. The family arrangement was made, and the partition was done by consent under Section 85 of the Maharashtra Land Revenue Code. The terms of the said application bind the present appellant, but he came with an incorrect defence of self-acquired property. Hence, there are no substantial questions of law involved in this appeal.

6. It is admitted that the parties to the suit had moved an application for partition by mutual consent under Section 85 of the Maharashtra Land Revenue Code before the Collector. In the application, it has been specifically mentioned that the land gut No. 2463 will be partitioned later on as there was an encumbrance. It was his conscious statement made in the said application. It seems that the other properties were partitioned by consent. However, the suit property remained in his possession, and he wished to open the partition by suit for the properties for which there was already a partition. The statement of a party to the suit made before a competent authority binds him. The contents of the application under Section 85 of the Maharashtra Land Revenue Code bound the appellant. The appellant cannot run away from his admission.

7. Perused the impugned judgment and orders along with the facts of the case. The Court finds substance in the arguments of the learned counsel for the caveator that no substantial questions of law are involved in this case. Hence, both appeals stand dismissed at the admission stage.

8. Civil applications, if any, stand disposed of.