

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

SECOND APPEAL NO. 441 OF 2022

Ramkrishna Govindrao Kolewad .. Appellant

Versus

1. Vithal Govind Kolewad
2. Madhav Govind Kolewad
3. Pandhari Govind Kolewad .. Respondents

Mr. R. R. Deshmukh, Advocate for the Appellant.
Mr. Ameya N. Sabnis, Advocate for Respondent No. 1.

**WITH
CIVIL APPLICATION NO. 10218 OF 2022
IN
SECOND APPEAL NO. 441 OF 2022**

Ramkrishna Govindrao Kolewad .. Applicant

Versus

1. Vithal Govind Kolewad
2. Madhav Govind Kolewad
3. Pandhari Govind Kolewad .. Respondents

Mr. R. R. Deshmukh, Advocate for the Applicant.
Mr. Ameya N. Sabnis, Advocate for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATED : 10th OCTOBER, 2023.

P.C. :-

. Heard the parties for some time.

2. The original defendant No. 2 has approached this Court against the concurrent judgments in the suit filed by respondent No. 1 for partition and separate possession. The learned Trial Court by judgment and decree dated 04.05.2017 was pleased to decree the suit holding that the plaintiff and defendants are entitled to 1/4th share in the land admeasuring 0.90 R from Survey No. 104/3 and out of Survey No. 104/4 admeasuring four (04) H 96 R land at village Wadhwana, Taluka Udgir, District Latur. Thus, the defendant – original appellant challenged the decree. The defendant Nos. 1 and 2 were directed to vacate the possession of the land to the respective share. The said decree was challenged by filing appeal bearing RCA No. 54/2017. The learned Appellate Court dismissed the appeal with costs by judgment and order dated 17.08.2021.

3. The case of the plaintiff is that the suit properties are the joint family properties at village Wadhwana, Taluka Udgir. The defendants are his real brothers. The plaintiff was residing at Pune for the purpose of his service and constructed the house at Pune from his independent income. It is further case that, though the separate

revenue entries are taken in the name of all the brothers, however, those were taken only for the purpose of finance and to avail the benefit of Government schemes. However, there is no actual partition of the suit properties and the house. The learned Trial Court accepted the case of the plaintiff by considering the evidence on record. It is only defendant No. 2 – the present appellant who has challenged the decree in the appeal. Other defendants accepted the decree and did not challenge it further.

4. It is the case of defendant No. 2 – present appellant that the suit was not maintainable as all the properties including the property of the plaintiff at Pune are not included in the suit and no prayer made against all the properties and therefore, the suit is not maintainable. To prove that property at Pune is a joint family property he examined himself and one driver of a bus. The defendant in his evidence submitted that the plaintiff has acquired the house property. He used to take material from the native place. Even the bus driver i.e. DW-2 deposed that, he saw that plaintiff was carrying wooden frames for the door and windows to Pune from the native place. This is the only evidence of the defendant No. 2 to show that the property at Pune is acquired out of the joint family property. There is no any other evidence on record in the form of documents. So far as the agricultural

properties, it is admitted that the same is ancestral property. There is no dispute about the jointness of these properties. Thus, the case of the original defendant No. 2 is only that all the properties are not self acquired property. At the same time, he could not prove that the property at Pune in the name of plaintiff falls to be joint family property.

5. Learned advocate for the appellant relies upon the judgment in the case of Govindrao Gangaramji Ajmire Vs. Dadarao @ Shrawan Gangaramji Ajmire (dead) L.Rs. Indrani Shrawan Ajmire and others reported in 2004 (4) Mh.L.J. 653. By referring to paragraph No. 17 he submits that, to maintain the suit for partition it should embrace of the joint family property is recognized and firmly applied in order to bring the equitable partition by metes and bounds. On the facts the said civil appeal was allowed. Then it was specifically recorded that the plaintiff had declined to have partition of entire joint properties and therefore, the suit was dismissed. In this case nothing of that is proved.

6. Admittedly, the plaintiff is in service at Pune. Thus, there is no dispute that he has earned independent income from his salary. Under such circumstances it was necessary for the defendant to specifically prove that the plaintiff's property at Pune is purchased from the income of joint family. The defendant has failed to prove the said fact.

7. This Court finds that, there is no substance in the ground that the suit was not maintainable unless all the properties of the joint family were brought in the common property. This Court finds that, no substantial question of law is made out to admit the appeal. Thus, the appeal deserves to be dismissed.

8. The appeal is hereby dismissed.

9. Pending civil application also stands disposed off in view of disposal of the appeal.

(KISHORE C. SANT, J.)

P.S.B.