

Pooja K.

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

SECOND APPEAL NO. 63 OF 2018  
WITH  
CIVIL APPLICATION NO. 906 OF 2018  
IN  
SECOND APPEAL NO. 63 OF 2018

|                             |                |
|-----------------------------|----------------|
| Vishal Rajendrasingh Tiwari | ... Appellant  |
| <i>Versus</i>               |                |
| Ranjit Pandharisingh Tiwari | ... Respondent |

...  
Mr. R.P. Adgaonkar – Advocate for Appellant  
Mr. V.D. Godbharle – Advocate for Respondent  
....

**CORAM : GAURI GODSE, J.**  
**DATE : 8<sup>th</sup> February, 2023**

**PER COURT :**

1. This Second Appeal is preferred by the original defendant for challenging concurrent judgments and decrees for possession in favour of respondent / plaintiff. The suit filed by the respondent for possession on the basis of title was decreed by the 3<sup>rd</sup> Joint Civil Judge Senior Division, Latur by judgment and decree dated 1<sup>st</sup> September, 2014 passed in Special Civil Suit No. 67 of 2012. Learned District Judge-2 by judgment and decree dated 9<sup>th</sup> August, 2017 in Regular Civil Appeal No.155 of 2014 confirmed the decree passed by the trial court.

2. Learned counsel for the appellant submitted that, the appellant had come up with a specific case that, the suit property was belonging to the joint family nucleus. Appellant had placed on record the copies of the sale-deeds which were executed by appellant and respondent jointly along with other family members. He further submitted that, copy of compromise decree in the suit for partition which was passed in Regular Civil Suit No.623 of 1981 was in fact acted upon by the joint family members. He further submitted that, though the suit property was purchased in the name of respondent / plaintiff, it was purchased out of joint family income. He submitted that burden was upon the plaintiff to prove his independent source of income for claiming the suit property as his exclusive property and not joint family property.
3. In support of his submissions, the leaned counsel for the appellant relied upon the judgment of Hon'ble Supreme Court in the case of *Makhan Singh (D) by LRs. Vs Kulwant Singh*<sup>1</sup>. He relied upon the said decision in support of his case that the burden was on the plaintiff to prove that the suit property was his exclusive property. He thus submitted that, both the courts

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<sup>1</sup> MANU/SC/7260/2007

were in error in holding that the suit property was not a joint family property. Hence, substantial question of law arises in the appeal. Hence, Second Appeal deserves to be admitted.

4. Learned counsel for the respondent submitted that, execution of the sale-deed in the name of respondent is not disputed. Perusal of the reasoned judgment by both the courts would show that, the respondent/plaintiff has proved his own independent source of income, on the basis of documents as well as oral evidence. The learned counsel for respondent submitted that, the respondent/plaintiff was in service and his independent source of income was considered by both the courts and findings of fact is recorded that the respondent had his own independent and sufficient income. He therefore, submitted that, the submissions made on behalf of appellant are with respect to factual aspect which are considered by both the courts and there is no substantial question of law in the second appeal. He, therefore, submitted that the Second Appeal be dismissed.

5. I have gone through the record of Second Appeal. The learned trial judge has framed a specific issue regarding exclusive ownership of the respondent. The contention regarding the

appellant being owner of half share was also framed by the trial court. Perusal of the reasonings given by the trial court shows that the appellant has failed to prove partition of suit property effected on 18<sup>th</sup> January, 1998. The claim of appellant of being owner of half share of suit property, pursuant to the partition effected on 18<sup>th</sup> January, 1998 is also examined by both the courts. Both the courts after examining the evidence on record has disbelieved the case of 50% ownership of the appellant.

6. With respect to the submissions made on behalf of appellant regarding burden on the respondent/plaintiff to prove that the suit property was exclusive property of respondent and it was not joint family property, is concerned, the burden shifted upon the appellant, as the document of title is in the name of the respondent and he had also proved his independent source of income. I do not find any merit in the said submission. Both the courts have considered execution of the compromise decree dated 17<sup>th</sup> November, 1981, in Regular Civil Suit No. 623 of 1981. The compromise in the said suit recorded that parties had agreed to partition the ancestral properties as described in the plaint. Thereafter, by sale-deed dated 5<sup>th</sup> January, 1982 suit property was purchased by the respondent.

7. The case of the appellant with respect to claim of half ownership pursuant to the partition of the year 1998 is concerned the same is disbelieved by both the courts. Pursuant to the sale-deed the respondent is held to be exclusive owner of the suit property and appellant is held to be in permissive possession of the suit property. Both the courts on appreciation of evidence have concluded that ownership of suit property is of the respondent on the basis of the sale-deed. The trial court after framing proper issues and examining the documents and oral evidence on record, has passed a decree of possession in favour of the respondent. The said decree is confirmed by the first appellate court by again framing proper points for consideration. Submissions made on behalf of appellant are based on factual aspects. Re-appreciation of evidence is not permissible under section 100 of CPC. The Second Appeal does not raise any question of law. Hence, the Second Appeal is dismissed. There will be no order as to costs.
8. In view of dismissal of the Second Appeal, the Civil Application does not survive and same is dismissed.
9. At this stage learned counsel for the appellant states that, by

order dated 20<sup>th</sup> December, 2018 there was an interim protection granted in his favour on the condition that, he will deposit the amount Rs.5,000/- per month in the trial court. He submitted that the said protection be continued for a limited period.

10. Considering the facts and circumstances of the case and that there was interim protection in favour of the appellant during the pendency of the Second Appeal, the same order dated 20<sup>th</sup> December, 2018 to continue for a period of six weeks from today, subject to condition that, the appellant shall continue to deposit the amount of Rs.5,000/- per month in the trial court.

**[ GAURI GODSE ]**  
**JUDGE**