

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.275 OF 2015
WITH
CIVIL APPLICATION NO. 605 OF 2015

Shri. Raosaheb Raigonda Patil And Ors. ...Appellants
v/s.

Shri. Babu Huvanna Patil
(Since Deceased Through Legal Heirs)
And Ors.

...Respondents

Mr. Umesh Mankapure a/w. Bhavika Shinde for Appellant.
Mr. Vijay Killedar for Respondent No.1A.

CORAM : RAJESH S. PATIL, J.

DATED : 11 DECEMBER 2023

P.C.:

1. This Second Appeal is filed against concurrent finding recorded by the Trial Court and First Appellate Court. Appellants are original Plaintiffs. The Second Appeal is pending for admission for the year 2015.

2. The Defendant had earlier filed Suit being RCS No.181 of 1973 for partition. That suit was decreed so also Appeal arising out that suit was dismissed. The decree in that suit was confirmed by High Court. The father of present Appellant was Defendant in that suit. .

3. The present Plaintiff filed this suit for partition of all

the properties mentioned in that suit. However, both Courts have held that the Plaintiff not able to prove that the entire properties are ancestral properties and joint family properties. It is admitted position that the earlier suit filed by Defendant No.1-Babu Patil was answered in favour of Defendant No.1 not only by the Trial Court and Appellate Court but also by the High Court so also by the Supreme Court. Only grievance raised by the present Plaintiff is that they were not parties to the earlier litigation, therefore, the decree is not binding on him.

4. Admittedly, the father of the present Plaintiff was party to said litigation. Appellant original Plaintiff can not now take stand that the previous litigation where his father was party to the said decree not binding on him. In my view in order to avoid to give possession in the execution proceeding, the present suit was filed.

6. According to me no substantial question of law arises in this matter. Hence, Second Appeal is dismissed. Consequently, Civil Application also stand dismissed. No cost.

(RAJESH S. PATIL, J.)