

Pallavi

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.270 OF 2023  
(E-FILING)**

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| Pandu Dhondi Chavan Thr. His<br>Power of Attorney Shri Shivaji Pandu Chavan<br>Versus<br>Shankar Dhondi Chavan | ...Appellant<br><br><br>...Respondent |
|----------------------------------------------------------------------------------------------------------------|---------------------------------------|

- Mr. G.S. Patil, for the Appellant.

**CORAM : MADHAV J. JAMDAR, J.  
DATE : 17<sup>th</sup> APRIL 2023**

**P.C. :**

1. Heard Mr. Patil, learned counsel appearing for the Appellant.
2. The Appellant is original defendant no.1. Respondent No.1 i.e. the original plaintiff filed a suit for partition bearing Reg. Civil Suit No.73 of 2011. The suit was decreed by Judgment and Decree dated 27<sup>th</sup> September 2016 passed by the learned Trial Court.
3. The present Appellant i.e. the original defendant No.1 filed Reg. Civil Appeal No.314 of 2016 and by Judgment and Decree dated 6<sup>th</sup> December 2022 passed by the learned District Judge – 5, Kolhapur, the said Appeal was dismissed.
4. It is the contention of Mr. Patil, learned counsel appearing for the Appellant that substantial question of law involved in the present

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Second Appeal is that the learned Trial Court decreed the suit for partition and the same is confirmed by the learned First Appellate Court although the evidence on record clearly shows that there is previous partition.

5. Perusal of the judgment and decree of the learned Trial Court as well as the learned First Appellate Court shows that both the Courts have analyzed the evidence on record and have come to the conclusion that defendant no.1 has failed to prove the previous partition by metes and bounds. They have taken into consideration the evidence on record viz. revenue entries as well as the fact that the plaintiff has sold certain portion of the property.

6. Both the learned Courts, on the basis of the evidence on record as well as in view of the legal position held that the revenue entries do not prove the partition. It has been further held that sale of undivided share in the property also do not prove the previous partition.

7. Mr. Patil failed to point out that the impugned judgment and decree of the learned Trial Court as well as learned First Appellate Court is contrary to the evidence on record. Therefore, there is no substance in the substantial question of law raised by the Appellant.

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8. Second Appeal is dismissed, however, with no order as to costs.
9. In view of dismissal of Second Appeal, nothing survives in pending Interim Applications, if any.

**[MADHAV J. JAMDAR, J.]**