

Dusane

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

SECOND APPEAL NO.682 OF 2016

Ramchandra Babu Khambal ...Appellant

V/s.

Hari Sakharam Khambal (deceased) ...Respondents
thru' LRs & Ors.

Mr. Sanskar Marathe for the Appellant.

Mr. Harinder Toor with Mr. Subhash Bane for
Respondent Nos.1-B, 2,3, 4, 5,6, 16 and LRs of 17.

CORAM: MADHAV J. JAMDAR, J.

DATE: 7th June 2023

P.C.:

1. Heard Mr. Marathe, learned Counsel appearing for the Appellant and Mr. Toor, learned Counsel appearing for the Respondents.

2. By the present Second Appeal, the Appellant, who is the original Plaintiff is challenging the legality and validity of the judgment and decree dated 2nd November 2015 passed by the learned Principal District Judge, Ratnagiri in Regular Civil Appeal No. 116 of 2009.

3. By the impugned judgment and decree of the First Appellate Court, the said Appeal was partly allowed by setting aside the judgment and decree of partition and separate possession dated 10th August 2009 passed by the learned Civil Judge, Junior Division, Rajapur in Regular Civil Suit No. 44 of 1996 regarding suit properties at serial Nos. 1 to 24 of the Plaint and the decree of the trial Court of partition and separate possession with respect to the suit property at serial No.25 of the plaint was maintained.

4. Mr. Marathe, learned Counsel appearing for the Appellant has raised following two substantial questions of law:

- (a) Whether the reliance of the First Appellate Court, on mutation entries to non-suit the Plaintiff with respect to the suit properties at serial Nos. 1 to 24 is proper in view of the settled legal position that the mutation entry do not confer any title?
- (b) Whether the finding of the learned First Appellate Court of previous partition is in accordance with the evidence on record?

5. Mr. Toor, learned Counsel appearing for the Respondents pointed out various mutation entries and also findings recorded by the learned First Appellate Court and submitted that there is no substance in the substantial questions of law raised by the Appellant.

6. The Appellant i.e. original Plaintiff is claiming his right through one Bhikaji Mahadu Khambal. The present Respondents i.e. the Defendants are belonging to the branch of Hari Sakharam Khambal and Jayram Vishram Khambal.

7. The learned First Appellate Court has discussed the evidence of oral partition on the basis of mutation entries Nos. 211 and 117. The mutation entry No. 211 is dated 7th May 1957. The said mutation entry records that there is partition between said Bhikaji Mahadu, Hari Sakharam and Jayram Vishram.

8. Section 113 of Bombay Land Revenue Code, 1879 is regarding recording of partition in the revenue record.

9. The learned First Appellate Court has discussed oral evidence of the Plaintiff where the Plaintiff has admitted that since the said partition, the ancestors of Plaintiff and Defendants and now they are cultivating the lands separately.

10. Mr. Toor has also pointed out on the basis of said partition, which has been recorded by the mutation entry No. 211 dated 7th May 1957, subsequently there is consolidation scheme implemented and the said scheme has been accepted by the Plaintiff.

11. Therefore, there is no substance in the substantial questions of law raised by Mr. Marathe that by mutation entry, no right is vested. Mr. Marathe is right in contending that the mutation entry does not vest any right. However by the said mutation entry no new rights are created, but the partition effected between the parties is only recorded in the revenue record. Thus, it is clear that not only suit properties at serial Nos. 1 to 24 are actually partitioned in 1957 but the same is recorded in revenue record and since then the parties are in separate possession of their share. The position as per said partition as reflected in mutation entry No. 211 dated 7th May 1957 is thereafter confirmed in the consolidation scheme as the respective parties have retained the possession as per the consolidation scheme, which they have obtained on the basis of the said oral partition. Therefore there is no substance in the substantial questions of law raised by Mr. Marathe.

12. Accordingly, the Second Appeal is dismissed, however, with no order as to cost.

(MADHAV J. JAMDAR, J.)