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

**SECOND APPEAL NO.474 OF 2007
WITH
CIVIL APPLICATION NO.113 OF 2021
WITH
CIVIL APPLICATION NO.5633 OF 1998**

Ananda Raghunath Nikam ...Applicants
(deceased) thru' heirs and LR's
Popat Ananda Nikam & Ors.

Vs.

Dhondur @ Daga Ananda Nikam ...Respondents
& Ors.

Mr. S.T. Bhosale i/by Mr. Dilip Bodake for
Appellants/Applicants.

Ms. Rukmini Khairnar i/by Mr. P.N. Joshi for
Respondent Nos. 1 and 2.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 21st MARCH 2023**

P.C.:

1. Heard Mr. Bhosale, learned Counsel appearing for the
Appellants and Ms. Khairnar, learned Counsel appearing for
Respondent Nos. 1 and 2.

2. Mr. Bhosale submitted that the following substantial
question of law is involved in the present Second Appeal.

Whether the finding of both the Courts that the suit properties are joint family properties is not in accordance with the evidence on record?

3. In this case, both the learned Trial Court as well the learned First Appellate Court has come to the conclusion that the properties are joint family properties. In fact, both the Courts have concluded that the Defendant No.1 has sold the properties and thereafter purchased other properties after disposing of the joint family properties.

4. This is the case where none of the Defendants have entered into the witness box.

5. Both the Courts on the basis of evidence on record have come to the conclusion that the properties are joint family properties. They have relied on partition deed between the Defendant No. 1 and his brother and in that partition, Defendant No.1 got 6 acres and 12 gunthas of land. They have also relied on Mutation Entry showing that the said properties were sold by Defendant No.1 in the year 1956-1957 and thereafter in 1957 some other properties have purchased. Thereafter the same properties, which were purchased in 1957 were again sold in 1962 and new properties were purchased in 1962 and in 1977.

6. On the basis of evidence on record, both the Courts have concurrently held that the properties are joint family properties

and available for partition.

7. Mr. Bhosale failed to point out any material showing that the said finding is not in accordance with the evidence on record.

8. The Defendants have not entered into the witness box. Therefore, adverse inference is required to be drawn against them. There is no substantial question of law involved in the appeal. Therefore, the Second Appeal is dismissed.

9. In view of dismissal of the Second Appeal, nothing survives in the Civil Applications, the same are accordingly disposed of.

(MADHAV J. JAMDAR, J.)