

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 442 OF 2017

ALONGWITH

CIVIL APPLICATION NO. 831 OF 2017

IN

SECOND APPEAL NO. 442 OF 2017

Vaijanta Vithal Jadhav & Ors.

**..... Appellants/
Applicants**

VERSUS

Tanubai W/O. Vishnu Madane

(deceased Thr. Lrs)

Shalan Maruti Shirtode & Ors.

..... Respondents

Mr.N.J.Patil for the Appellants/Applicants.

Mr.Mahindra Deshmukh for the Respondent Nos. 1A to 1F and 2A to 2E.

CORAM: RAJESH S. PATIL, J.

DATE : 6th DECEMBER, 2023

P.C. :-

This Second Appeal challenges the concurrent findings recorded by the Civil Judge, Junior Division, Vita and as confirmed by the District Judge, Sangli.

2. The appellants are the original defendants in the suit. The plaintiffs are the legal heirs of the first wife of one Mr.Krishna Tatoba

Jadhav and the defendants are the legal heirs of the second wife of Mr.Krishna Tatoba Jadhav. A suit was filed by the plaintiffs for partition and separate possession of their shares in the landed property and in the house. The said suit of the plaintiffs was decreed by the Trial Court thereby declaring that the plaintiff nos.1, 2 and 3 had $1/8^{\text{th}}$ share each. Likewise, the defendants were granted a share of $9/32^{\text{th}}$ to the defendant no.1, defendant nos.2 and 3 together $9/32^{\text{th}}$ share, defendant nos. 4 and 5 have $1/32^{\text{th}}$ share each in the suit property as described in the plaint in paragraph nos. 1-A and 1-B.

3. The defendants being dissatisfied with the judgment and order passed by the Trial Court, filed an Appeal before the District Court. The said appeal filed by the defendants was dismissed by the District Court and the Second Appeal was filed by the defendants challenging the findings recorded by both the Courts. Upon hearing the parties, this Court by its order dated 26 November, 2015 passed in Second Appeal No. 846 of 2003 set aside the order passed by the District Court and remanded the matter back to the District Court for hearing and final disposal afresh. The District Court was directed to formulate the points for determination in accordance with the provisions of the Code of

Civil Procedure, 1908 and to render the findings thereon after hearing both the parties and after considering the evidence, pleadings and provisions of law.

4. On remand, the District Judge heard the parties and by its judgment and order dated 26 April, 2016 was pleased to dismiss the appeal filed by the defendants. The present Second Appeal has been filed in the year 2016 and has been pending in this Court for admission from the year 2016.

5. I have heard both the sides and have considered the documents on record.

6. It has been specifically recorded in the judgment and order dated 26 April, 2016 by the District Court in paragraph (12) that the advocate appearing for the appellants in District Court submitted to the Court that there is no dispute regarding partition of the suit land. The decree to that effect was not under challenge. Therefore, the appeal remains only in respect of the house property.

7. Today, before me learned advocate Mr.Patil has made submission that the District Court did not frame all the points for determination as per the directions given by this Court in its order dated 26 November, 2015. The fact that the advocate for the appellants has categorically made a statement before the Court that there was no dispute regarding the suit land has been recorded in the order and therefore, the matter proceeded only with regard to the dispute involved in the matter i.e. the house property. It is not the case of learned advocate Mr.Patil that after his client realizing the contents of the impugned judgment wherein it has been recorded that there is no dispute regarding the partition of the suit land, they have taken any action with regard to the said statement recorded in the said impugned order.

8. Therefore the only issue argued to be considered by me is the suit house property. It is the case of the defendants that the old house which was in existence has collapsed and they had by their own funds, constructed a new house. Admittedly, the defendants have not produced any document on record to prove that they on their own have constructed a new house out of their separate income. There is no

evidence on record to show that a new house was mutated in the records of right of Grampanchayat. In fact, the plaintiffs have produced on record the assessment extract in form Village Form No.8 for the year 1977-78 showing the description of the suit house. Therefore, the defendants miserably failed to show that they had constructed a new house out of their own separate income and therefore, the plaintiffs would have no share in the said share as it was constructed by them by their own funds.

9. In view of this fact, the findings recorded by the Trial Court and the Appellate Court is the correct finding and there is no substantial ground shown by the appellants to admit this Second Appeal.

10. There is no merit in the Second Appeal. Second Appeal is dismissed.

11. Any pending civil application is also disposed of.

[RAJESH S. PATIL, J.]