



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.226 OF 2015

Kashinath s/o Zumbar Tawre,
Age : 75 years, Occu.: Agriculture,
R/o.: Kada, Taluka – Ashti,
District : Beed

.... **APPELLANT
(Ori. Plaintiff)**

VERSUS

1. Bhanudas s/o Natha Tawre,
Age : 47 years, Occu.: Agriculture,
R/o.: Kada, Taluka – Ashti,
District : Beed
2. Anil Champalal Rathod,
Age : 29 years, Occu.: Agriculture,
R/o.: As above.
3. Sumitkumar s/o Sureshlal Rathod,
Age : 21 years, Occu.: Agriculture,
R/o.: As above.

.... **RESPONDENTS
(Ori. Defendants)**

....
Mr. Ram B. Deshpande, Advocate for the appellant
....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 26/06/2024.

ORDER :

1. Heard rival submissions on the point of admission.

2. The appellant, who is the original plaintiff in Special Civil Suit No. 56 of 2005, has challenged the judgment and decree passed by the learned District Judge-3, Beed in Regular Civil Appeal No.98 of 2009 under which the dismissal of aforesaid special civil suit at the hands of the learned Civil Judge (Senior Division), Beed, has been upheld.

3. The appellant / plaintiff has come out with the case that suit property Survey No.135/B/2, admeasuring 6 H. 33 R. situated at Kada, Taluka – Ashti, District – Beed is the ancestral property of himself and present respondent No.1 i.e. original defendant No.1. There was no partition between themselves in respect of suit property. Originally the suit property was owned by father of the appellant by name Zumbar Tawre and after his death on 06/12/1976, all the names of his legal representatives were mutated in the record of rights of the suit property vide Mutation Entry No.1570. Respondent No.1- Bhanudas is the son of Natha, who was son of original ancestor- Zumbar. According to the appellant / plaintiff, after death of Natha, Bhanudas and he himself started cultivating the land jointly but suddenly respondent No.1 Bhanudas sold 60R., land from the suit property to present respondent Nos.2 & 3 without informing him. As such, the

appellant was constrained to file aforesaid Special Civil Suit No. 56 of 2005 for purchasing the said 60R land sold to respondent Nos.2 & 3 under preemption right as contemplated in Section 22 of Hindu Succession Act. The learned trial court i.e. Civil Judge (Senior Division), Beed after conducting the trial, dismissed the suit and consequently the learned first appellate court i.e. the District Court, Beed also dismissed Regular Civil Appeal No.98 of 2009 filed thereon. As such, the present second appeal has been filed by the appellant / plaintiff against the concurrent findings of both the learned courts below.

4. The learned counsel for the appellant / plaintiff submits that both the learned courts below have erred in holding that there was a partition between the plaintiff and his brother Natha in respect of the suit property and therefore, no preemption right is applicable as contemplated in Section 22 of Hindu Succession Act in the instant matter. According to him, Anusayabai Kondiba Desai i.e. one of the sisters of the plaintiff, has filed RCS No.257 of 2013 for partition of the suit property, which is still pending. As such, the substantial question of law is that during the pendency of partition suit by Anusayabai how both the learned courts below recorded

finding of partition between the appellant / plaintiff and respondent No.1.

5. It is significant to note that the appellant / plaintiff is claiming preferential right to purchase the portion of the suit property on the basis of Section 22 of the Hindu Succession Act by contending that there was no partition in respect of the suit land between himself and respondent No.1 – Bhanudas. Admittedly, there is existence of preemption right in Section 22 of the Hindu Succession Act. It is applicable only in respect of joint family property of Hindu joint family, which is not divided by metes and bounds. In the instant case, respondent No.1 under his written statement, has specifically come out with the case that there was partition between appellant / plaintiff and his father Natha in the year 1978 and the same was confirmed under the decree of court i.e. Civil Court, Ashti in RCS No.56 of 1981. During the course of evidence, the appellant / plaintiff has admitted in his cross-examination that he had filed the aforesaid RCS No.56 of 1981 in the Civil Court at Ashti against Natha and present respondent No.1 – Bhanudas for declaration and injunction. In the said suit, the appellant / plaintiff had specifically pleaded that northern portion of the suit land had come to his share as per the partition effected

in the year 1976. He also stated that southern portion of the suit land was allotted to the share of Natha. He had also filed a map showing partition of the suit land. It also shows that the suit was decreed and the said decree remained unchallenged. The appellant /plaintiff had also admitted further that he transferred 3 Acres land in the name of his son – Raju, 3 Acres land in the name of his another son- Sanju and remaining 1 Acre 33 Guntha land stood in his name by virtue of the subsequent partition between himself and his sons in the year 1986. Thus, it is clearly evident that the appellant / plaintiff has failed to establish the necessary ingredients for acquiring preemption right under Section 22 of the Hindu Succession Act that the suit property is still joint in nature. Thus, the findings of both the learned lower courts on this aspect has no perversity.

6. The learned counsel for the appellant / plaintiff also tried to show that the property is still joint since the suit filed by one of the sisters of the plaintiff for partition is still pending. However, it appears that the present appellant / plaintiff had not made Anusayabai as a party defendant in his earlier suit bearing RCS No.56 of 1981, wherein he had come with the case of partition between himself and Natha. Therefore, when the plaintiff himself

had come out with the case of partition, then at least he is not entitled to claim any right of preemption under Section 22 of the Hindu Succession Act in respect of transfer made by respondent No.1. The suit filed by Anusayabai may be decided on its own merit but the present appellant / plaintiff cannot take benefit of the fact about the pendency of that suit when he himself had accepted that there was a partition in the suit land. Therefore, the appellant / plaintiff has been definitely stopped from claiming right of preemption by his own earlier conduct.

7. Considering all these aspects, no substantial question of law as raised by the learned counsel for the appellant appears to be involved in this appeal and therefore, the appeal stands dismissed at admission stage and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)