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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 SECOND APPEAL NO. 699 OF 2018

KAUSHALYABAI BHAGWANRAO GHATGE

....Appellant

VERSUS

SULOCHANA BHARATRAO YADAV AND OTHERS

.....Respondents

Mr. M. V. Ghatge, Advocate for the appellant

Mr. V. P. Kadam, Advocate for the respondent No.1

CORAM : KISHORE C. SANT, J.

DATE : 01st AUGUST, 2024

P. C.

1. Heard the parties.

2. This appeal is against a decree passed by the learned trial court and confirmed by the learned appellate court.

3. The present appellant is original defendant No.1. Plaintiff Sulochana and Vrindavani had filed suit for recovery of possession, declaration, mesne profit and perpetual injunction. Both the plaintiffs are sisters of both the defendants. Their

parents died leaving behind the ancestral property. However, possession was with defendant Nos. 1 and 2. It was defense of the defendants that the property is received by them by way of Sridhan and thus they have become exclusive owner of the property. Second defense was that there was oral partition and the property is received by them in oral partition. Third defense was that plaintiffs have executed consent deed relinquishing the right in the property. Learned trial court held that defendants failed to prove that the property was received as Sridhan. It is further held that even oral partition is not proved by the defendants and so far as defense of consent deed is concerned, there is no documents produced on record. Thus, the learned trial court specifically recorded findings that properties are ancestral properties and since the defendants have failed to prove their defense and passed a decree.

4. Being aggrieved by the judgment and decree dated 17-10-2013 passed by the learned CJJD, Parbhani in RCS No.275/2012 both the defendants approached the learned

District Judge by filing RCA No.146/2013. Said appeal also came to be dismissed by learned Ad-hoc. District Judge, Parbhani by judgment and order dated 11-04-2018 confirming the judgment and decree passed by the learned trial court. Against the said judgment and decree only defendant No.1 has now come before this court.

5. Learned Advocate Mr. Ghatge vehemently argued that both the courts have failed in appreciating the evidence on record. Defendants had laid the oral evidence to show that the property was received as a Sridhan and by way of partition. In support of third defense of consent deed though no document was produced. However, evidence of defendants ought to have been accepted.

6. Learned advocate for the respondent supports the judgment stating that both the courts have recorded categorical findings on all the issues. He further submits that no interference is permissible while exercising jurisdiction under

Section 100 of the CPC.

7. This court has gone through the judgment of the learned trial court as well as appellate court. This court does not find any perversity in recording of findings and coming to the conclusion. All the issues are held against the present appellant. There is one more factor which weighs in mind is that defendant No.2 has not challenged the judgment and decree of the appellate court. Since there is no perversity pointed out in appreciating the evidence, this court holds that no substantial question of law is made out to entertain the appeal.

8. In view of this, this court finds that no ground is made out to entertain the appeal and therefore, appeal deserves to be dismissed same is hereby dismissed. No order as to costs.

9. In view of dismissal of the appeal, pending civil applications if any, does not survive and stand disposed off.

[KISHORE C. SANT, J.]