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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 903 OF 2022
WITH
INTERIM APPLICATION NO. 30726 OF 2022
IN
SECOND APPEAL NO. 903 OF 2022**

Sopanrao Vishnu Vadgaonkar
(Kumbhar)

.....Appellant

Vs.

Smt. Sarasvati V. Vadgaonkar
(Kumbhar Now Deceased)
Shri. Arun Vishnu Vadgaonkar
(Kumbhar) and others

.....Respondents

Mr. Anand S. Patil for the applicant

CORAM : GAURI GODSE, J.

DATE : 19th JULY 2024

ORDER:

1. Heard learned counsel for the appellant. This second appeal is filed by the original defendant no. 4 to challenge the concurrent judgments and decrees declaring that the plaintiffs have 2/7th share in the suit properties and directing partition of the properties mentioned in

paragraph nos. 1A to 1D of the plaint. The decree for partition was challenged by defendant no. 5 and defendant no. 4 by filing two separate appeals. Both the appeals are dismissed by a common judgment; however, only defendant no. 4 has challenged the dismissal of his appeal.

2. Learned counsel for the appellant submitted that the appellant had raised a specific plea that there was already a prior partition. However, the Trial Court failed to frame any issue on the prior partition as pleaded by defendant no. 4. He further submitted that the Appellate Court had framed a point for consideration regarding prior partition; however, has failed to take into consideration the evidence regarding prior partition. He submitted that the oral admissions of the parties would indicate that, as per the prior partition, the parties were in possession of their respective separate shares.

3. Learned counsel for the appellant further submitted that all the joint family properties were not included in the suit. Hence, the suit for partition could not have been decreed. He relied upon the oral evidence of the plaintiff to point out that CTS No. 461 was originally

purchased in the name of the father and sold to Ramchandra Kumbhar. He submitted that within a period of few days, the property was purchased from Ramchandra Kumbhar in the name of plaintiff no. 2. He thus submitted that the transaction with regard to CTS No. 461 was a bogus transaction and that the said property was also a joint family property.

4. To support his submission regarding CTS No. 461 being a joint family property, learned counsel for the appellant pointed out the cross-examination of plaintiff no. 2 to show that there was an admission that the said property was a joint family property. Learned counsel for the appellant thus submitted that both the Courts had ignored a vital piece of evidence in the form of admissions by plaintiff no. 2. Hence, both the Courts have not correctly appreciated the grounds raised on behalf of defendant no. 4 on both counts, i.e. there was prior partition and CTS No. 461, which was a joint family property, was not included in the suit for partition. Learned counsel thus submits that the second appeal would, therefore, require consideration of the aforesaid questions, which raise a substantial question of law.

5. I have considered the submissions made on behalf of the appellant. I have perused the papers of the second appeal as well as paper-book of the first appeal.

6. Both the Courts have concurrently held that properties claimed by defendants to be joint family properties were self acquired properties of plaintiff no. 2 and his wife. The Trial Court also referred to the admissions of the appellant, accepting that CTS No. 461 stands in the name of plaintiff no. 2, and he has carried out a construction on the said property. The Trial Court has further also referred to admissions given by defendant no. 4 that he has purchased flat no. 52, from the construction made on CTS No. 461. The Trial Court has further also referred to the admissions of defendant no. 4 regarding the acquisition of the said property by plaintiff no. 2, and that the same was never challenged by defendant no. 4. Thus, after taking into consideration all the documentary as well as oral evidence on record, the Trial Court accepted the case of the plaintiff that the properties sought to be argued by defendant no. 4 as joint family properties were, in fact, self-acquired property of plaintiff no. 2. Suit properties are thus accepted

as joint family properties.

7. The first Appellate Court does not accept the ground with regard to prior partition. Though there is no issue framed on a prior partition by the Trial Court, a perusal of the written statement of defendant no. 4 does not indicate that any specific plea was raised regarding prior partition. The only averment relied upon by the learned counsel for the appellant in the written statement refers to the denial that there was any cause of action in the year 2004 as there was oral partition. Thus, in the absence of any specific pleadings with regard to prior partition, I see no fault in the issues framed by the Trial Court and the evidence recorded on the status of the suit properties being joint family properties.

8. A perusal of the reasons recorded by the First Appellate Court indicates that all the factual aspects, as well as oral and documentary evidence, are examined, and the First Appellate Court confirmed the findings of the Trial Court. Both the aforesaid grounds argued on behalf of the appellant are considered in the impugned Judgments. Admissions on the part of the plaintiff relied upon by the learned

counsel for the appellant do not indicate that there is any specific admission on behalf of the plaintiffs regarding CTS No. 461 being a joint family property. In fact, a perusal of the oral evidence indicates that the plaintiff admitted that originally, CTS No. 461 stood in their father's name. However, it was sold to one Ramchandra Kumbhar, and the same was purchased later by plaintiff no. 2. Admittedly, the said transaction is not challenged by the appellant. Thus, both the Courts have rightly relied upon the document of title, which stands in the name of plaintiff no. 2.

9. The second admission relied upon by the learned counsel for the appellant on page 52 of the paper-book of the District Court cannot be read as an admission by ignoring other evidence on record. There is no dispute that defendant no. 4 purchased a flat from the construction made on CTS No. 461, which stood in the name of the plaintiff. The stray sentence from the oral evidence cannot be relied upon by discarding the other substantial evidence on record, which indicates that all the joint family properties were part of the suit. The reasons recorded by both the Courts for accepting other properties as self-

acquired properties of plaintiff no. 2 and his wife are based on documentary as well as oral evidence on record. Thus, the grounds raised in the present second appeal would require re-appreciation of the evidence on record, which is not permissible under Section 100 of the Code of Civil Procedure, 1908.

10. A perusal of evidence relied upon by the learned counsel for the appellant and the reasons recorded by both Courts do not indicate that any part of the evidence is ignored by the Courts. Hence, the grounds argued on behalf of the appellant would not require any consideration by this Court as they do not raise any substantial question of law.

11. Second appeal does not raise any other substantial question of law. Hence, second appeal is dismissed.

12. In view of dismissal of second appeal, Interim Application No. 30726 of 2022 stands disposed of as infructuous.

[GAURI GODSE, J.]