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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 458 OF 2024
WITH
INTERIM APPLICATION NO. 11622 OF 2024
IN
SECOND APPEAL NO. 458 OF 2024**

Shivaji Sudam Chaudhari

.....Appellant

Vs.

Ankush Sudam Chaudhari and others

.....Respondents

Mr. D. S. Mhaispurkar for the appellant

CORAM : GAURI GODSE, J.

DATE : 13th AUGUST 2024

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by the original defendant no. 1 to challenge the concurrent Judgments and Decrees directing partition and separate possession of the suit properties.

2. Learned counsel for the appellant submitted that both the Courts ignored the vital admissions given by the plaintiff, agreeing that the

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parties were in possession of the separate part of the suit properties. He further submitted that in view of the earlier partition effected in the year 1982, defendant no. 2 also executed the registered sale deed in favour of Haridas Chaudhary i.e. common ancestor of defendant nos. 1, 3 to 7. He thus submits that the very fact that defendant no. 2 sold his share by way of a registered sale deed supports the contention of defendant no. 1 that there was oral partition between the parties and the respective parties were in possession of the shares allotted to them. He further submits that the operative order of the first Appellate Court's Decree directing allotment of the portion of the suit property improved by defendant no. 1 to his share shows that the Court accepted that there was a partition.

3. Learned counsel for the appellant thus submitted that the admissions given by the plaintiff clearly indicates that there was oral partition between the parties and all the parties were in possession of their respective part of the property allotted to their share. He thus submits that the second appeal raises a question of law on the point of not considering the vital admissions given by the plaintiff regarding parties being in possession of their respective separate shares.

4. I have considered the submissions made by the learned counsel for the appellant. Perused papers of the second appeal.

5. It is not in dispute that the suit property is an ancestral joint family property. The only objection to the suit for partition and separate possession is on the ground raised by defendant no. 1 that there was oral partition by metes and bounds in the year 1982. Except for the pleadings on oral partition, admittedly no documentary evidence was produced on record to show that the suit property was divided by metes and bounds. It is not in dispute that the names of the parties are shown as joint owners in the revenue records of the suit property. The suit properties are agricultural properties. Hence, the properties are required to be divided as contemplated under Section 85 of The Maharashtra Land Revenue Code, 1966. Admittedly, no such procedure is adopted by any of the parties for division of the suit property.

6. With regard to the submissions made based on the execution of the sale deed by defendant no. 2, is concerned, the same would not support the theory of partition by metes and bounds, in as much as admittedly, an undivided share of defendant no. 2 was sold by way of a

registered sale deed. Thus, execution of the sale deed for an undivided share would not support the oral partition by metes and bounds in the year 1982. In the absence of any documentary evidence to show that there was partition by metes and bounds, there cannot be any fault found in the reasons recorded by both the Courts. After examining the pleadings as well as the evidence produced on record, both the Courts have recorded finding of facts regarding the suit property being joint property. Defendant no. 1's theory of oral partition by metes and bounds is not accepted by both the Courts. I do not find any illegality or perversity in the reasons recorded by both the Courts.

7. The grounds raised on behalf of the appellant to support the case of the oral partition by metes and bounds need not be considered in this second appeal, in view of the concurrent findings of facts. Second appeal does not raise any substantial question of law. Second appeal is therefore is dismissed.

8. In view of dismissal of the second appeal, Interim Application No. 11622 of 2024 is dismissed as infructuous.

[GAURI GODSE, J.]