

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.276 OF 2024
WITH
INTERIM APPLICATION NO.8286 OF 2024
IN
SECOND APPEAL NO.276 OF 2024**

Namdev Maruti Chavan and Ors. ...Appellants

Versus

Babasaheb Maruti Khot (since deceased
through its LRS.)
Bapu Babasaheb Khot and Anr.

...Respondents

...

Mr. Nagesh Chavan *for the Appellants.*

CORAM : SANDEEP V. MARNE, J.

DATED : 9 MAY 2024.

PC:

1. By this appeal, the Appellants challenge the Decree dated 3 November 2023 passed by the District Court, Sangli in Regular Civil Appeal No.2001 of 2017, by which the first Appellate Court has allowed the appeal and set aside the Decree dated 12 June 2017 passed by the 2nd Jt. Civil Judge, Junior Division, Miraj and has decreed Plaintiff's suit for partition. The first Appellate Court has granted 1/3rd share to Plaintiffs alongwith 1/3rd shares each to Defendant No.1 and the heirs of Defendant No.2.

2. I have heard Mr. Chavan, the learned counsel appearing for the Appellants and have considered the submissions canvassed by him.

3. According to Mr. Chavan the Suit filed for partition was clearly barred by principle of non-joinder of necessary parties. According to Mr. Chavan, the Plaintiff admitted that Suryaba and Tanubai have shares in the joint family property and therefore they were necessary parties to the Suit. However, perusal of the findings recorded by the first Appellate Court in paragraphs 15 and 16 of its Judgment would indicate that Defendants gave admission in written statement that partition had taken place between Maruti and Suryaba before 1951. Thus, units of Maruti and Suryaba had separated prior to 1951 itself. It is questionable whether Tanubai had share in ancestral property at the time when such partition took place. In any case, none has raised any claim on behalf of Tanubai for her share in joint family property. Therefore, so far as the Maruti and Suryaba are concerned, their units got separated prior to the year 1951.

4. In that view of the matter, neither Suryaba nor Tanubai became necessary parties to the Suit. Next contention of Mr. Chavan that there was oral partition between Maruti, Babasaheb, Namdev and Appasaheb. However, perusal of the findings recorded by the Trial and first Appellate Court would indicate that concurrent findings of fact are recorded about non-existence of such oral partition. In exercise of jurisdiction under Section 100 of the CPC, it would not be possible for this Court to reverse such concurrent findings in absence of perversity. Considering the overall conspectus of the case, I am of the view that no substantial question of law is involved in the appeal. Second Appeal is accordingly rejected.

5. Interim application is disposed of.

[SANDEEP V. MARNE, J.]