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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 299 OF 2014**

Vithal Appa Kudale (Deceased) by Heirs and ... Appellants
Ors

vs.

Narayan Rama Kudale (Deceased) by Heirs ... Respondents
and Ors

Mr. Sandeep Phatak (through VC) i/b. Mr. Sugandh Deshmukh, for
Appellants.

CORAM : GAURI GODSE, J.

DATED : 6th DECEMBER 2024

ORDER:

1. Heard learned counsel for the appellants. This second appeal is preferred by the original defendant no.1, to challenge the concurrent judgments and decrees granting partition and separate possession.

2. Learned counsel for the appellants submits that one of the suit properties was purchased by defendant no.1 out of the income received from sale proceeds of the property belonging to his wife. He further submits that the prayer of the plaintiffs seeking partition and separate possession amounts to reopening of the partition of

the landed properties that were already partitioned. He further submits that in the absence of any material regarding the suit properties belonging to the joint family, both the courts erred in granting the decree for partition and separate possession. He submits that the evidence on record produced on behalf of defendant no.1, indicates that the house property was purchased from the income of the sale proceeds of his wife's property, thus, it would amount to his self-acquired property. He, further submits that the factual aspect of the property being purchased by defendant no.1 from the sale proceeds of his wife's property was not considered by both the courts.

3. Learned counsel thus, submits that the second appeal would require consideration on the point that the material evidence on record is ignored by the courts. He submits that the findings recorded by both the courts on accepting the suit properties as joint family properties is based on incorrect appreciation of evidence on record.

4. I have considered the submissions made on behalf of the appellants. The relations between the parties are not in dispute. The existence of the joint family nucleus is also not in dispute. It is defendant no.1's contention that there is already a partition between

the three brothers i.e. Narayan, Appa and Govind for landed property, and the house property subsequently acquired, standing exclusively in the name of defendant no.1 is his self acquired property. Both the courts have examined the evidence on record and disbelieved defendant no.1's claim that the house property is his exclusive property. The issue regarding the suit property being purchased by defendant no.1 from the sale proceeds of the property belonging to defendant no.1's wife, is not supported by any evidence. The theory of prior partition between the parties in respect of the landed property is also not supported by any evidence. There is no record that indicates that there was any partition in respect of the suit properties.

5. In view of the concurrent findings of facts, the arguments raised on behalf of the appellants would require reappreciation of the evidence on record which is not permissible under Section 100 of the Civil Procedure Code, 1908. I do not find any illegality or perversity in the findings recorded by both the courts.

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

(GAURI GODSE, J.)