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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 395 OF 2020**

Raju Madhukar Pawar and Others ... Appellants

Vs.

Sitabai Maruti Pawar (since ... Respondents

Deceased through LRs)

Smita Lahu Mane and Others

Mr. Vishwanath Talkute for the Appellants.

CORAM : GAURI GODSE, J.

DATE : 14th DECEMBER 2024

ORDER :

1. Heard learned counsel for the appellants. This second appeal is preferred by the original defendant nos. 1 to 4 to challenge the concurrent judgments and decrees granting partition and separate possession.

2. Learned counsel for the appellants submits that there was a family arrangement in the year 1983 and accordingly Mutation Entry No. 2095 was effective on 3rd December 1983 which supports the appellants' case that in view of the family arrangement all the suit properties were divided and all parties were in possession of their respective properties allotted to their share.

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3. Learned counsel for the appellants further submits that in Mutation Entry No. 2095 the plaintiffs and other defendants' predecessor relinquished their right and name of Madhukar i.e. predecessor in title of the appellants was recorded. He submits that the four Gat numbers mentioned in the Mutation Entry No. 2095 was renumbered as Gat No. 1853. He submits that the revenue records indicating names of all the parties in different Gat numbers with reference to their areas would clearly indicate that only an area of 30 R was given to Madhukar and considering the area of the other respective Gat numbers names of the three brothers Maruti and Manik was entered in the revenue record.

4. Learned counsel for the appellants thus submits that the Mutation Entry No. 2095 effected on the application filed by the three brothers would show the family arrangement amongst the parties and their independent separate possession of each brother as per the family arrangement. He submits that both the courts erred in not correctly appreciating revenue record which shows that the parties are in possession of their respective areas. He submits that even the house properties are in possession of the respective parties which supports the appellants' case that there was partition by metes and bounds.

5. Learned counsel for the appellants therefore submits that the second appeal would require consideration on the ground that there is misappreciation of the evidence on record and more particularly Mutation Entry No. 2095, which indicates that pursuant to the family arrangement the appellants' predecessor i.e. Madhukar's name continued in Gat No. 1853.

6. To consider the submissions made on behalf of the appellants, I have carefully perused both the judgments. Both the courts have examined the revenue records indicating the entries made with regard to all the suit properties. The Mutation Entry No. 2095 was recorded on an application made by the three brothers. The application is produced on record at Exhibit 141. Both the courts have held that the contents of the application and mutation entry refers to the relinquishment by Maruti and Manik. Both the courts have refused to accept it as a valid relinquishment. Both courts have held that Mutation Entry No. 2095 would not indicate that there was partition by metes and bounds amongst all the joint family members with regard to the suit properties.

7. The trial court examined the record of assessment produced at Exhibit Nos. 142 to 144. The trial court held that the names entered with regard to the suit properties disclose the name of

deceased Maruti as manager of the Hindu Joint Family. The trial court thus referred to the assessment extract at Exhibit 142 and 144 and Exhibit 135 to 138 to hold that the suit house properties were standing in the name of joint hindu family. Similarly after examining mutation entry with regard to agricultural landed properties, the trial court held that none of the record would indicate that there was partition by metes and bounds.

8. The First Appellate Court has re-examined the evidence on record with reference to the appellants' contention regarding the family arrangement of 1983. The First Appellate Court referred to the application at Exhibit 141 pursuant to which Madhukar's name was entered in Gat No. 1853 and the name of Maruti and Manik was entered in Gat No. 1286. Considering the contents of the application at Exhibit 141 and the contents of the mutation entry the First Appellate Court confirmed the trial courts findings that the same would not indicate that there was any partition by metes and bounds.

9. Considering the admitted facts regarding the relationship of the parties and the suit properties originally acquired by Gajaba the First Appellate Court confirmed the trial court's findings that in the absence of any evidence to indicate partition by metes and bounds,

the ground raised on behalf of defendant nos. 1 to 4 of prior partition based on the family arrangement cannot be accepted as a prior partition disentitling the plaintiff to seek partition and separate possession.

10. A perusal of the reasons recorded by both courts indicates that admittedly the suit properties originally belonged to Gajaba. The relationships between the parties is not in dispute. Except by relying upon the application at Exhibit 141 and Mutation Entry No. 2095 the appellants have not produced any evidence to show partition by metes and bounds with regard to all the suit properties. Both courts, thus rightly disbelieved the family arrangement as prior partition by metes and bounds. I do not find any illegality or perversity in the reasons recorded by both the courts.

11. Learned counsel for the appellants relied upon the decision of the Hon'ble Apex Court in the case *Maturi Pullaiah alias Naga Pullaiah and Another vs. Maturi Narasimham and Others*¹ to support his submissions that the family arrangement as recorded in Mutation Entry no. 2095 would indicate that there was a prior partition amongst the family members. He submits that the principles settled by the Hon'ble Apex Court regarding the brief

1 1966 SCC Online SC 91

summary of the nature of family arrangements in paragraph 13 and 14 of the judgment squarely applies to the facts of the present case. The principles settled by the Hon'ble Apex Court in the decision of *Maturi Pullaiah* are with regard to the validity of the family arrangements. In paragraph 31 of the judgment the Hon'ble Apex Court held that the document as referred to in the facts of that case did not bring about a division by metes and bounds between the parties and it did not affect the interest of the parties in the immovable properties. In view of the facts in the said case the legal principles settled are with regard to validity of the family arrangements.

12. In the present case, even if the family arrangement is accepted, the same nowhere indicates any partition by metes and bounds, that would disentitle the plaintiff from seeking partition on the ground of a prior partition. Hence, in view of the different facts of the present case, the legal principles settled by the Hon'ble Apex court would not be of any assistance to the argument raised on behalf of the appellants.

13. Considering the concurrent findings of facts disbelieving the theory of prior partition the grounds argued 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. The reasons recorded by both courts cannot be faulted on the ground of incorrect appreciation of evidence.

14. Hence, in view of the concurrent findings of facts, the grounds raised on behalf of the appellants would not require any consideration by this court. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]