

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 464 OF 2023

Shri Ganpati Shripati Gurav, since
deceased through LRS and Ors.

...Appellants

:V/s :

Sau. Akkatai Ramchandra Gurav and
Ors.

...Respondents

Mr. Prasad P. Kulkarni, for the Appellants

Mr. V.A. Shastri, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 23 January 2024.

P.C. :

1. By this Appeal, Appellants challenge Judgment and Order dated 19 June 2023 passed by the District Court, Kolhapur dismissing Regular Civil Appeal No. 285 of 2015 filed by the Appellants and confirming the Decree dated 8 July 2015 passed by the 12th Joint Civil Judge Junior Division, Kolhapur in Regular Civil Suit No. 688 of 2011.

2. Plaintiffs are sisters of Defendants. They instituted Regular Civil Suit No. 688 of 2011 for partition of suit properties consisting of agricultural lands and house properties. The Trial Court has decreed the suit holding that the three Plaintiffs and two Defendants each

have one-fifth share in the suit properties. The Appeal preferred by the Appellants has been rejected by the first Appellate Court. Aggrieved by the decisions of the trial and the first Appellate Court, Defendants/Appellants have filed the present Appeal.

3. I have heard Mr. Kulkarni, the learned counsel appearing for the Appellants and Mr. Shastri, the learned counsel appearing for the Respondents. After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that objection of limitation was raised to defend the suit by the Defendants/Appellants. The objection of limitation was premised on the Mutation Entry No. 2893 effected on 9 August 1975. It is the contention of Defendants/Appellants that the Mutation Entry was effected after service of notice on the Plaintiffs. That by effecting Mutation Entry No.2893, names of only two Defendants were mutated to the records of rights of the agricultural properties and that this amounted to exclusion of Plaintiffs from the suit property. That therefore the suit for partition could have been filed within a period of 12 years of such exclusion under the provisions of Article 110 of the Limitation Act. Mr. Kulkarni has further submitted that Mutation Entry No. 2893 was introduced for the first time before the Appellate Court. The Appellate Court has taken the said Mutation Entry on record and has marked the same in evidence. However, following the provisions of Order 41 Rule 28 of the Civil Procedure Code, 1908, the first Appellate Court ought to have remanded the issue to the Trial Court or could have taken the evidence with regard to Mutation Entry

No. 2893 itself. In my view, Mutation Entry being a public document, has rightly been exhibited by the first Appellate Court. Even if the contents of Mutation Entry No. 2893 are taken as correct and even if it is assumed that the Mutation Entry was effected after service of notice to Plaintiffs, the Mutation Entry does not evidence exclusion of Plaintiffs from the suit properties. Mere mutation of name of one of the co-parceners to the suit property in exclusion of other co-parceners, does not amount exclusion of such co-parceners from the suit property. To prove exclusion as contemplated under Section 110 of the Limitation Act, it is necessary to prove that the exclusion was by way of partition and one of the co-parcener is denied any share therein. The Mutation Entry made for fiscal purposes does not determine rights and entitlement of the parties in respect of the land in question. In my view, therefore Mutation Entry No. 2893 did not amount to exclusion of Plaintiffs from the suit property. The suit was thus not barred by limitation under Article 110 of the Limitation Act.

4. Mr. Kulkarni has relied upon Mutation Entry No. 2330 certified on 2 March 1965 by which the land described therein has been regranted in favour of his father, Shripati Bala Gurav subject to the condition of non-alienation thereof either directly or indirectly. According to Mr. Kulkarni by that condition, the suit property cannot be partitioned as partition would amount to indirect alienation of the property. I find the contention to be rather amusing. Succession of property after death of Shripati Bala Gurav would not amount to alienation thereof. Going by the theory sought to be suggested by

Appellants/Defendants, even the Defendants would not be able to claim any share in the properties in respect of which Mutation Entry No. 2330 has been certified. The contention is thus stated only to be rejected.

5. Coming to the issue of partition of house properties, reliance is placed on partition deed executed between the brothers on 18 January 1993. It is contended that the said partition deed is signed by all the three Plaintiff sisters. However, perusal of the findings recorded by the Trial and the first Appellate Court would indicate that the said partition deed has not been proved and cannot be read in evidence on account of failure to register the same. Mr. Kulkarni, would submit that in absence of registration, the partition deed can be taken into consideration atleast for collateral purposes of proving that the partition effected by the said document was indeed acted upon. However, Plaintiffs do not agree that the two brothers started occupying the house properties as per the alleged partition deed. On the contrary, Plaintiff No.2 has specifically pleaded in the plaint that she occupies one of the house properties. In that view of the matter, partition deed cannot be used even for collateral purposes.

6. After considering the overall conspectus of the case, I am satisfied that no substantial question of law is involved in the Appeal. The Appeal is accordingly **rejected**.

SANDEEP V. MARNE, J.