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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 249 OF 2015

WITH

CIVIL APPLICATION NO. 1168 OF 2017

WITH

CIVIL APPLICATION NO. 1309 OF 2015

Shri Rajendra Basaveshwar Malge ... Appellant/Applicant

Vs.

Shri Basaveshwar Sidramappa Malge ... Respondent

Mr. Samir Kumbhakoni for the Appellant.

Mr. Vishwasrao Deokar for Respondent No. 3 (through VC).

Mr. Suhas Inamdar for Respondent No. 6 and 7 in CA/1168/2017.

CORAM : GAURI GODSE, J.

DATE : 11th SEPTEMBER 2024

ORDER :

1. Heard learned counsels for the parties. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing the plaintiff's claim for partition and separate possession in respect of the property described in the plaint in paragraphs 2(B) and 2(C). The trial court allowed the rest of the prayer for partition and separate possession. The said decree is confirmed by

the First Appellate Court in an appeal preferred by the plaintiff. The decree for partition and separate possession with respect to the remaining property is accepted by the defendants.

2. Learned counsel for the appellant submits that the suit property 2(B) was a business of studio carried out by defendant no. 1. He further submits that the said business belonged to the joint family, and hence the plaintiff was entitled to a share in the same. To support his submission, learned counsel for the appellant relied upon the Arbitration Award between defendant no.1, his father, and his brothers. Learned counsel for the appellant submits that the oral evidence on record, particularly the oral evidence of defendant no. 1's brother indicates that the photo studio business also belonged to the joint family.

3. So far as the claim of partition with respect to the suit property described in the plaint in paragraph 2(C) is concerned, the said property is house property. Learned counsel for the appellant submits that the house property was purchased prior to the Arbitration Award of partition. He thus submits that the said property also belonged to the joint family, and hence, the plaintiff is entitled to a separate share in

both the properties. To support his submission, learned counsel for the appellant pointed out the findings of the trial court as well as the First Appellate Court. He submits that since the house property was purchased before the Arbitration Award recording partition, it is obvious that it also belongs to the joint family property. He thus submits that rejection of the plaintiff's suit for partition and separate possession described in paragraphs 2(B) and 2(C) would amount to misappreciation of the evidence on record. He thus submits that the Second Appeal would require consideration on the aforesaid points, which raises substantial questions of law.

4. To appreciate the submissions made on behalf of the appellant, I have perused both the judgments, the plaint and the Arbitration Award. A perusal of the Arbitration Award clearly indicates that photo studio business described in the plaint paragraph 2(B) is mentioned as a separate business of defendant no.1. Both the courts have considered the Arbitration Award as well as the oral evidence and recorded a specific finding that the photo studio business is a separate business of defendant no. 1. There is nothing on record to indicate that the photo studio business was an ancestral or joint family business.

5. So far as the property described in the plaint at paragraph 2C is concerned, the same is purchased by defendant no.1. There is no dispute that the same is purchased by defendant no. 1. There is nothing on record to indicate that the property was purchased from any joint family income or that it was belonging to joint family. The arbitration Award regarding partition between defendant no. 1, his father and brothers does not refer to the said property as ancestral or joint family property. The said property is an open plot purchased by defendant no. 1. Hence, the property standing on the said plot was sold by defendant no. 1 on 20th June 1984. The suit was filed in 1997. There is no challenge to the sale deed executed by defendant no.1. Both the courts have examined the pleadings as well as oral and documentary evidence and recorded findings of fact that the property in paragraphs 2(B) and 2(C) are independent properties of defendant no. 1 and, thus, rejected the plaintiff's claim for partition and separate possession.

6. In view of the concurrent findings recorded by both courts on facts, the ground raised on behalf of the appellant would not require consideration as it does not raise any substantial question of law.

7. I do not find any illegality or perversity in the reasons recorded by both courts. The Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

8. In view of the dismissal of the Second Appeal, Civil Application No. 1168 of 2017 and Civil Application No. 1309 of 2015 are dismissed as infructuous.

[GAURI GODSE, J.]