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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 144 OF 2017
WITH
INTERIM APPLICATION ST NO. 15694 OF 2024
IN
SECOND APPEAL NO. 144 OF 2017**

Ramchandra Sitaram Chavan

.....Appellant

Vs.

Kalavati Vishwanath Chavan and ors

.....Respondents

Mr. Girish Agrawal a/w Ms. Naiana Boraste for the appellant

Mr. Gautam T. Kanchanpurkar for respondent nos. 1 to 6

CORAM : GAURI GODSE, J.

DATE : 13th DECEMBER 2024.

ORDER:

1. Heard learned counsels for the parties. This second appeal is preferred by the defendant to challenge the judgment and decree passed by the first Appellate Court granting partition and separate possession in respect of the suit properties. The trial Court had decreed the suit for partition and separate possession in respect of two of the suit properties. The suit was dismissed with regard to suvey no. 42/2-B by accepting the defendant's contention that it was self

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acquired property of his father i.e. Sitaram. The suit decreed was challenged by the plaintiffs in the first appeal. The first Appellate Court has modified the trial Court's decree and granted partition and separate possession in respect of all the three properties. Hence, this second appeal by the original defendant.

2. Learned counsel for the appellant submits that the suit property i.e. survey no. 42/2-B though purchased in the name of Daji i.e. the original holder, the consideration amount was paid by Sitaram which makes the property his self acquired property. Learned counsel for the appellant relies upon an admission given by plaintiff no. 1 i.e. Kalawati that the consideration amount was paid by Sitaram. He submits that the plaintiffs failed to produce any documentary evidence to show that Daji in whose name the property was purchased had any independent source of income and that it was purchased from his own income or from any joint family nucleus. He submits that the plaintiffs failed to prove that there was joint family nucleus between the parties. He therefore submits that in view of the admission given by plaintiff no. 1, the trial Court rightly refused to grant partition in respect of said survey number.

3. Learned counsel for the appellant further submits that the first Appellate Court has mis-appreciated the evidence on record and inspite of admission given by plaintiff no. 1, the first Appellate Court has erred in accepting that property at survey no. 42/2-B is also a joint family property. Learned counsel for the appellant thus submits that the second appeal would require consideration on the ground that the first Appellate Court did not properly consider the vital admission given by plaintiff no. 1.

4. Learned counsel for the respondents supports the impugned decree. He submits that the sale deed stands in the name of Daji and name of Sitaram is nowhere included in the sale deed. He submits that there is no evidence produced to show that Sitaram had any independent source of income for making the payment towards consideration for sale in favour of Daji. He thus submits that a stray admission given by plaintiff no. 1 cannot be taken into consideration in the absence of any evidence produced by the defendant that Sitaram had his independent source of income to purchase the property in the name of Daji.

5. To consider the submissions made on behalf of the parties, I

have thoroughly examined the reasons recorded by both the Courts. There is no dispute that the sale deed in respect of survey no. 42/2-B stands in the name of Daji. The first Appellate Court has referred to the admission given by plaintiff no. 1, however, refused to consider, only that statement to accept that the property was self acquired property of Sitaram purchased in the name of Daji. The first Appellate Court held that there was no document produced on record to indicate that Sitaram had any independent source of income. The first Appellate Court in paragraphs 10 to 12 has considered the entire evidence.

6. A perusal of the reasons recorded by the first Appellate Court indicates that admittedly Sitaram was suffering from leprosy disease at the relevant time and he was not doing any work. Thus, considering the admitted facts at the time of execution of the sale deed in the name of Daji, the first Appellate Court refused to accept the defendant's contention that the property was independent self acquired property of Sitaram.

7. The first Appellate Court has also rightly considered the relevant date of the execution of the sale deed i.e. the sale deed executed in the year 1929. The recitals in the sale deed regarding payment of consideration amount by Daji is also taken into consideration by the

first Appellate Court. From the reasons recorded by the first Appellate Court, it further reveals that the jointness of the family was not disputed and the defendant had never objected for partition in respect of other two properties. Thus, in view of the aforesaid facts, I see no fault in the findings recorded by the first Appellate Court. There is no illegality or perversity in the reasons recorded by the first Appellate Court. All the documentary as well as oral evidence has been thoroughly considered by the first Appellate Court.

8. In view of the findings of facts recorded by the first Appellate Court, the grounds raised on behalf of the appellant would not require any consideration by this Court.

9. The second appeal does not raise any question of law. Hence, the second appeal is dismissed.

10. In view of dismissal of second appeal, Interim Application St No. 15694 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]