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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 274 OF 2014**

Dadasaheb Antu Navale and OrsAppellants

Vs.

Uttam Sitaram NavaleRespondent

**WITH
SECOND APPEAL NO. 186 OF 2015
WITH
CIVIL APPLICATION NO. 360 OF 2015
IN
SECOND APPEAL NO. 186 OF 2015**

Dasa Antu Nawale and anrAppellants

Vs.

Uttam Sitaram Nawale and anrRespondents

Mr. Kirankumar Phakade Advocate for the Appellants
Mr. Ajit Kenjale a/w Mr. Sohil Gulabani a/w Mr. Azharuddin Khan a/w
Mr. Sai Kadam for the respondents

CORAM : GAURI GODSE, J.

DATE : 11th NOVEMBER 2024

ORDER:

1. Heard learned counsel for the parties. Second Appeal No. 274 of

2014 arises out of the concurrent judgments and decrees allowing the plaintiff's suit for declaration that he is the owner to the extent of half share of the suit property. Second Appeal No. 186 of 2015 arises out of concurrent judgments and decrees for partition and separate possession granting half share to the plaintiff in the suit property. Original defendants have filed both the second appeals.

2. Learned counsel for the appellants submits that the defendants are claiming title over the suit property based on the consolidation scheme. He submits that the amendment to the consolidation scheme was made on an application filed by the plaintiff's father. He submits that the amendment to the consolidation scheme was allowed without giving any notice to the defendants and without hearing the defendants. He therefore submits that the amendment to the consolidation scheme would not be binding upon the defendants. He submits that based on unamended consolidation extracts produced at Exhibits 45 to 47, the defendants are owners of the suit property and the plaintiff is not entitled to seek any partition and separate possession.

3. Learned counsel for the appellants further submitted that the

Civil Court would not have jurisdiction to pass any decree with regard to handing over possession of the suit property which would be contrary to the consolidation scheme. He thus submits that the second appeals raise substantial questions of law on the ground of jurisdiction of the Civil Court and the amended consolidation scheme not being binding upon the defendants.

4. I have considered the submissions made on behalf of the appellants. I have perused the judgments in both the second appeals. In R.C.S. No. 191 of 2002, the trial Court has in detail discussed about the extract of the consolidation scheme relied upon by the defendants as well as amended scheme relied upon by the plaintiff. The consolidation extract produced at Exhibits 45 to 47 by the defendants were corrected under the consolidation scheme on 8th November 1978. As recorded by the trial Court, in view of the corrections in the consolidation scheme, the plaintiff's father was having 4 Anna share and the defendants' predecessor was having 8 Anna share in the suit property. The amended extract of the consolidation scheme is produced at Exhibit 56. In view of the amended consolidation scheme, the learned Judge has disbelieved the defendants' claim of ownership based on the unamended consolidation scheme. There is no dispute

that the amended scheme is not challenged by the defendants. It is not the appellants' case that even the appellants' predecessor was not given any notice about the amendment made to the consolidation scheme. Thus, I do not find any error in the concurrent findings recorded by the Courts in R.C.S. No. 191 of 2002 accepting the amended consolidation scheme which records share of plaintiff's father.

5. Based on the declaration granted in the earlier suit, the plaintiff's suit for partition and separate possession i.e. R.C.S. No. 144 of 2005 is decreed by the first Appellate Court by granting half share to the plaintiff. Initially, the suit was dismissed by the trial Court. In an appeal preferred by the plaintiff, the appeal is allowed and the suit for partition and separate possession is decreed. In view of the findings recorded on the declaration of ownership based on the consolidation scheme, the reasons recorded by the first Appellate Court for granting partition and separate possession cannot be faulted.

6. The grounds raised on behalf of the appellants are correctly dealt with by both the Courts in R.C.S. No. 191 of 2002. In view of the findings of facts recorded by both the Courts in both the suits on title of

the properties based on the consolidation scheme, the arguments raised on behalf of the appellants would not require any consideration by this Court. There is no perversity or illegality in the findings recorded in the impugned judgments.

7. The second appeals do not raise any substantial question of law. Hence, the second appeals are dismissed.

8. In view of dismissal of second appeals, Civil Application No. 360 of 2015 is disposed of as infructuous.

[GAURI GODSE, J.]