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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 126 OF 2021
WITH
INTERIM APPLICATION NO. 4222 OF 2019
IN
SECOND APPEAL NO. 126 OF 2021**

Shri. Shankar Dnyanu Jankar and orsAppellants

Vs.

Shri. Bhimrao Balu Jankar and OrsRespondents

Mr. Manoj Patil a/w Mr. Y. B. Lengare, Mr. Aditya Gaikwad i/b Ms.
Suman Y. Lengare for the appellants
Mr. Mahindra Deshmukh for the respondents

CORAM : GAURI GODSE, J.

DATE : 24th SEPTEMBER 2024

ORDER:

1. Heard learned counsel for the appellants. This second appeal is preferred by the original plaintiffs challenging the concurrent judgments and decrees dismissing the plaintiffs' suit for declaration that they have half share in the suit property and for an injunction restraining the defendants from obstructing their possession in respect of their half share in the suit property.

2. Learned counsel for the appellants submits that the defendants admitted that in the year 1952 Dnyanu Jankar and Balu Jankar have

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purchased the land. He submits that he said fact clearly indicates that there was a joint family nucleus between Dnyanu Jankar and Balu Jankar, when the suit property was purchased. The plaintiffs are heirs and legal representatives of Dnyanu Jankar and defendants are heirs and legal representatives of Balu Jankar. He thus submits that once there was a joint family nucleus, when the suit property was purchased, both the Courts erred in dismissing the suit for declaration and injunction. He further submits that in the cross-examination, power of attorney holder of defendants admitted that the documents of sale deed of the suit property were in custody of Dnyanu Jankar and that all the government taxes were also paid by the defendants. He thus submits that the admissions given by the defendants' power of attorney holder clearly indicates that the though the suit property was purchased in the name of Balu Jankar, the same belonged to joint family.

3. The learned counsel for the appellants thus submits that the important oral evidence indicating existence of joint family nucleus between the parties is not appreciated by both the Courts. He thus submits that the findings recorded by both the Courts on the suit property being self acquired property of Balu Jankar is based on

incorrect appreciation of the evidence on record. He thus submits that the second appeal would require consideration as the aforesaid grounds raise substantial questions of law on the point of incorrect appreciation of evidence on record.

4. I have perused the reasons recorded in the impugned judgments. It is not in dispute that the suit property was purchased in the year 1942 in the name of Balu Jankar. Present suit is filed in the year 2005 for a declaration that the plaintiffs have half share in the suit property claiming to be in exclusive possession of half share. However, nothing is produced on record to indicate that in what manner the plaintiffs were put in exclusive possession of their alleged half share in the suit property. The reasons recorded by both the Courts clearly indicate that all the documents on record with regard to the suit property stand in the exclusive name of defendants. Both the Courts have thoroughly examined the documentary as well as oral evidence on record. Even the mutation entries stand in the name of defendants.

5. Admittedly the consolidation entries regarding joint ownership of the parties was subsequently cancelled on the ground that same were illegal. It is not in dispute that cancellation of joint entry in the name of parties under the consolidation scheme is not challenged further. Both

Courts have also considered the consolidation scheme and cancellation of the entries in the name of plaintiffs in respect of the suit property. The plaintiffs have not claimed partition and separate possession on the ground that suit property is joint family property. The claim in the suit is based on a separate possession in respect of half share in the suit property. Both the Courts, based on evidence on record accepted the exclusive ownership of Dnyanu Jankar over the suit property.

6. The grounds raised on behalf of the appellants regarding joint family nucleus would require reappreciation of the pleadings and evidence on record which is not permissible under section 100 of Code of Civil Procedure, 1908. I do not find any illegality or perversity in the findings of facts recorded by both Courts.

7. Second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

8. In view of dismissal of second appeal, Interim Application No. 4222 of 2019 is dismissed as infructuous.

[GAURI GODSE, J.]