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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 338 OF 2020
WITH
INTERIM APPLICATION NO. 3972 OF 2019**

Shri Anis Akbar @ Iqbal Shaikh ... Appellant
Vs.
Sou. Asrabi Umar Bagwan and Others ... Respondents

Mr. Umesh R. Mankapure a/w. Ms. Stefy J. Dias for the Applicant.

CORAM : GAURI GODSE, J.

DATE : 21st OCTOBER 2024

ORDER :

1. Heard learned counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing the plaintiff's suit for partition and separate possession. Learned counsel for the appellant submits that the suit is dismissed only on the ground that the appellant is granted share in the earlier suit filed by him against defendant nos. 1, 2 and 3. He thus submits that both the courts erred in not considering that the present suit was filed against the heirs and legal representative of other two brothers as they were not party to the earlier suit.

2. In the earlier suit filed in the year 2010 the plaintiff was granted 1/7th share as claimed by him from other heirs and legal representatives of his father. However, in the present suit the plaintiff's sought similar relief by adding heirs and legal representatives of Mahammadbhai i.e. brother of plaintiff's father. Both the courts dismissed the suit on the ground that filing of the earlier suit only against the heirs and legal representatives of plaintiff's father, pre-supposed that there was partition between Mahammadbhai and his two brothers.

3. Learned counsel thus submits that the Second Appeal would require consideration on the point that the present suit was filed for partition and separate possession amongst other heirs and legal representatives of his father and Mahammadbhai.

4. A perusal of the pleadings of the plaintiff indicates that there is no explanation with regard to filing fresh suit after the original suit attained finality seeking similar reliefs against heirs and legal representatives of Mahammadbhai's brothers. Both the courts have considered the effect of the earlier suit and the effect of the earlier decree and the prayers made in the present suit. There is no dispute

that in the earlier suit the plaintiff had claimed 1/7th share.

5. I do not find any illegality or perversity in the reasons recorded by both the courts refusing to grant partition and separate possession in a fresh suit. Both the courts have rightly held that the suit will also be barred by Order II Rule 2 of the Code of Civil Procedure in view of the admitted facts regarding granting share in the earlier suit. The Second Appeal does not require any consideration by this court.

6. The Second Appeal does not raise any substantial question of law. Hence the Second Appeal is dismissed.

7. In view of the dismissal of the Second Appeal, Interim Application No. 3972 of 2019 is disposed of as infructuous.

[GAURI GODSE, J.]