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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO. 703 OF 2023  
WITH  
INTERIM APPLICATION NO. 17845 OF 2023**

Baban Mahadev Patil Ghode and Others      ...      Appellants

Vs.

Krushna Mahadev Ghode and Others      ...      Respondents

Mr. Bhushan Walimbe for the Appellants.

Mr. Satyajeet Rajeshirke a/w. Mr. Shubham Vasekar for the Respondents.

**CORAM : GAURI GODSE, J.**

**DATE : 14<sup>th</sup> OCTOBER 2024**

**ORDER :**

1. Heard learned counsel for the appellants. This appeal is preferred by the plaintiff to challenge the judgment and decree passed by the First Appellate Court modifying the trial court's decree. The trial court decreed the suit for partition and separate possession in respect of all the suit properties granting one-third share each to the plaintiff and defendant nos. 1 and 2.

2. Learned counsel for the appellants submits that the suit property originally belonged to Mahadev and his brother Dadu. He submits that though Dadu's undivided share was purchased, it was purchased out of the joint family income and hence the plaintiff filed a suit seeking partition and separate possession in respect of Mahadev's undivided half share as well as Dadu's undivided half share by defendant no.1. He submits that though the undivided half share of Dadu was purchased in the name of defendant no.1, it belonged to the joint family property.

3. He submits that admittedly defendant no. 1 had mortgaged the suit property for purchasing Dadu's undivided half share. He thus submits that in the absence of any sufficient proof of independent source of income of defendant no. 1, the First Appellate Court could not have accepted exclusive ownership of defendant no. 1 on the half undivided share of Dadu purchased by defendant no.1.

4. He points out the findings recorded by the First Appellate Court regarding oral and documentary evidence produced by defendant no. 1 regarding his source of income. He submits that the trial court correctly held that defendant no. 1 had no sufficient source of income

as reflected in the salary slip which would enable him to purchase Dadu's undivided share out of his independent source of income. He thus submits that the First Appellate Court erred in not appreciating the evidence on record which clearly indicates that Dadu's undivided half share purchased by defendant no. 1 was purchased from the joint family income.

5. Learned counsel for the appellant thus submits that the Second Appeal requires consideration on the point of incorrect appreciation of evidence on record by the First Appellate Court in accepting defendant no.1's exclusive right over half undivided share in the suit properties based on the independent income as shown by defendant no.1. He further submits that in the absence of any evidence on record the First Appellate Court accepted relinquishment deed executed by defendant nos. 3 to 5. He thus submits that the Second Appeal would also require consideration on the aspect of whether defendant nos. 3 to 5 validly relinquished their undivided share in respect of the suit property.

6. Learned counsel for the defendant no. 1 supports the impugned decree. He submits that admittedly defendant no. 1 has his own

source of income. He thus submits that the grounds raised on behalf of the appellants would amount to re-appreciating the facts and evidence on record. So far as relinquishment by defendant nos. 3 to 5 are concerned, he submits that relinquishment is accepted by defendant nos. 3 to 5 and they have not challenged the decree passed by the trial court as well as the First Appellate Court accepting the relinquishment. He submits that it is not open for the appellants to argue on the relinquishment made by defendant nos. 3 to 5.

7. I have perused both the judgments. Admittedly, the suit properties originally belonged to Mahadev i.e. father of the parties herein and Mahadev's brother Dadu. Execution of the sale deed in favour of defendant no. 1 by Dadu in respect of his half undivided share is also not in dispute. The registered document of sale deed in favour of defendant no.1, creates a presumptive value in favour of defendant no. 1 that he independently purchased the undivided half share of Dadu.

8. To support his submissions regarding his own independent income he has produced documents on record regarding his salary slip. The First Appellate Court has referred to the evidence produced

by the parties in respect of the undivided half share of Dadu sold to defendant no. 1. The sale deed as well as subsequent revenue record is examined by the First Appellate Court. The First Appellate Court has thus after examining evidence on record has accepted that the sale deed is executed in favour of defendant no. 1. The First Appellate Court is the last fact finding court. After examining the evidence on record the First Appellate Court accepted that defendant no. 1 would be entitled to Dadu's half undivided share in view of the sale deed executed in his favour.

9. The First Appellate court has also referred to the issue raised with regard to the loan paid by defendant no.1. The First Appellate Court has referred to the evidence on record regarding independent cultivation of the properties by the parties. The evidence with regard to defendant no. 1's independent income has also been considered by the First Appellate Court. Thus, the First Appellate Court being the last fact finding court, after examining the evidence on record has accepted that the defendant no. 1 was having his own independent income and thus sale deed in favour of defendant no. 1 was out of his own income and hence plaintiff is held entitled to claim share in

respect of Mahadev's half undivided share in respect of the suit property. Even otherwise, if the parties intended to purchase Dadu's undivided share for the joint family of Mahadev, there was no reason to execute the sale deed in the name of defendant no.1.

10. In view of the finding of fact recorded by the First Appellate Court and the document of title in the name of defendant no.1, I do not find any reason to interfere in the impugned judgment. There is no illegality or perversity in the reasons recorded by the First Appellate court. The Second Appeal does not raise any question of law. Hence, the Second Appeal is dismissed.

11. In view of the dismissal of the Second Appeal, Interim Application No. 17845 of 2023 is disposed of infructuous.

**[GAURI GODSE, J.]**