

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 326 OF 2021
WITH
INTERIM APPLICATION NO. 2949 OF 2021
IN
SECOND APPEAL NO. 326 OF 2021**

Muktabai Yashwant Choudhari

.. Appellant

Versus

Balu Bajirao Bhondve And Ors.

.. Respondents

...

Mr. Shekhar Jagtaqp i/b J. Shekhar Associates for the Appellant.

Mr. Kishor Patil i/b Mr. Arjun S. Pawar a/w Shrikant Patil for Respondent
Nos. 1, 2,5,6A to 6D.

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CORAM : SANDEEP V. MARNE J.

DATE : 19 MARCH 2024.

P. C.:-

1) By this Appeal, Appellant challenges Judgment and Decree dated 29 January 2020 passed by District Judge -3, Baramati dismissing Regular Civil Appeal No. 26 of 2015 and confirming the Decree dated 21 February 2015 passed by the 4th Jt. Civil Judge, Junior Division, Baramati in Regular Civil Suit No. 246 of 2009.

2) The Original Plaintiffs (Respondent Nos. 8 to 10) filed Regular Civil Suit No. 246 of 2009 seeking partition, separate possession and injunction in respect of suit properties. Appellant was impleaded as Defendant No. 6 in the suit. She filed Written Statement admitting the contentions raised by the Plaintiffs in the plaint and also raised a Counterclaim seeking 1/5 share in the suit properties. The suit was defended on merits by Original Defendant Nos. 1, 2, 4 and 5 claiming previous partition as well as purchase of some of the suit lands as self acquired properties. The Trial Court proceeded to dismiss the suit of the Original Plaintiffs holding that there was previous partition amongst parties in view of mutation entry No.2585. Appellant's Counterclaim was dismissed by holding that she relinquished her shares in the suit properties by virtue of mutation entry No.629 coupled with evidence given by other sisters about relinquishment of share by the Appellant.

3) Appellant challenged Trial Court's Decree dated 21 February 2015 before the First Appellate Court to the extent of rejection of her Counterclaim. The First Appellate Court has however proceeded to dismiss the Appeal by Judgment and Order dated 29 January 2020. Aggrieved by the decisions of the Trial Court and the First Appellate Court, Appellant has filed the present Second Appeal.

4) I have heard Mr. Shekhar Jagtap the learned counsel appearing for Appellant and Mr. Kishor Patil the learned counsel appearing for Respondent Nos. 1, 2, 5 and 6A to 6D.

5) It is Mr. Jagtap's contention that mere effecting of mutation entry No. 2585 cannot raise a presumption of partition of suit properties. He would further submit that the Trial Court and the First Appellate Court have

erred in holding that all the sisters of Maruti, Sarjerao and Bajirao had relinquished their shares in the suit properties. That relinquishment of share cannot be effected by mere mutation entry in absence of registered deed of relinquishment. He would therefore submit that substantial questions of law are involved in the Appeal.

6) The Trial Court was required to essentially decide two issues of i) previous partition between parties. ii) relinquishment of share by Defendant Nos.6/Appellant in the suit properties. Appellant herself did not file any suit claiming share in the suit properties. She relied upon Original Plaintiffs' suit who averred in the plaint that mutation entry No. 2585 was invalid and did not effect partition amongst the brothers. The focus of Original Plaintiffs in their suit was limited and they concentrated mainly on proving that mutation entry No.2585 did not effect partition. They did not raise any pleading about mutation entry No. 629, which apparently recorded relinquishment of rights inter alia by Defendant No.6/Appellant. In the light of this position, when Defendant No.6/Appellant filed a composite written statement and Counterclaim, it became incumbent upon her to raise a specific pleading that she had never relinquished her share in any of the suit properties. However the composite written statement and Counterclaim running into one and half pages did not contain any averment that she did not relinquish her shares in the suit properties or by mutation entry No. 629 did not amount to such relinquishment. Thus the Trial Court did not have any occasion to decide whether Defendant No.6 relinquished her share in the suit property or not. In absence of any specific pleading in the Counterclaim Appellant/Defendant No.6 could not establish that mutation entry No.629 did not effect any relinquishment on her part. She took a calculated chance by relying upon partition suit filed by Original Plaintiffs, where focus as observed above, was entirely different. They focused on proving that

mutation entry No.2585 did not effect partition amongst brothers and failed in their attempt. They did not plead that Defendant No.6 had not relinquished any share in the suit properties. Appellant/Defendant No.6 choose to file a terse written statement cum Counterclaim without raising any positive assertion about non relinquishment of share in the suit properties.

7) In my view therefore, the Trial Court rightly dismissed the Counterclaim filed by Appellants/Defendant No.6. Even perusal of the grounds/questions of law raised in the memo of Second Appeal would indicate that no ground has been raised to the effect that mutation entry No. 629 did not amount to relinquishment of share by the Appellant.

8) In my view therefore, no question of law, much less any substantial question of law, is involved in the Appeal. The Second Appeal is accordingly rejected.

9) In view of rejection of Second Appeal, Interim Application No.2949 of 2021 does not survive. The same also stands disposed of.

[SANDEEP V. MARNE J.]