



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 679 OF 2016
WITH
CIVIL APPLICATION NO.1356 OF 2016

Madhukar Shankar Pednekar and Ors. ... Appellants.

Versus

Late Gajanan Shankar Pednekar (deceased)
Through LR.s. and Ors. ... Respondents.

Mr. Aniket P. Ranade for the Appellants.

Mr. Pankaj Thatte a/w. Mr. Nikhil Sonar for the Respondent Nos.1(b) to 1(e).

Coram : Sharmila U. Deshmukh, J.

Date : April 24, 2024.

P. C. :

1. Being dissatisfied by the judgment dated 8th March, 2016 passed by the Appellate Court dismissing the Appeal confirming the judgment and decree passed by the Civil Judge Junior Division in Regular Civil Suit No.27 of 1996 dated 2nd January, 2009, the original Defendants are before this Court.

2. The facts of the case are that the Regular Civil Suit No.27 of 1996 was filed by the plaintiffs seeking partition and separate possession in 13 pieces of agricultural lands as well as the house building. The description of the landed properties was mentioned in

Schedule 1A to 1D, whereas the house properties is described in Schedule 1E. According to the plaintiffs, the suit properties described in Schedule 1A were acquired by the immediate family of the plaintiffs and the defendant nos.1 to 5 and the properties described in Schedule 1B to 1D are joint family ancestral properties of plaintiffs and the defendant Nos.1 to 15. It was the case of the plaintiffs that in the year 1985 due to dispute, the father of the plaintiffs and the defendant No.1 effected partition in the presence of the respectable persons from the village and the memorandum was prepared and as per the memorandum, certain properties were allotted to his share and he is being obstructed from enjoying his share of the properties. As such, the suit came to be filed seeking partition by metes and bounds.

3. The suit came to be resisted by the defendant Nos.4 and 5. The case of the defendants was that the Schedule 1A properties are the self acquired properties of deceased-defendant No.1 and that all the properties are not being included and thus, the suit was liable to be dismissed.

4. The parties went to trial. The Trial Court answered the issue as regards the previous partition of 25th January, 1985 between the plaintiffs and the defendant Nos.1 to 5 in the negative. The Trial Court held that the suit properties are the joint family properties and liable

to be partitioned and that the defendants have failed to prove that the suit properties of Schedule A and of Serial Nos.12 and 13 of Schedule 1D are bequeathed by the deceased-defendant No.1 to defendant Nos.24 to 28 on 13th September, 1995. The Trial Court decreed the suit determining the shares of the parties in properties at Schedule 1A and Schedule 1B to 1D. As against this, Appeal was preferred by the original-defendants. The Appellate Court confirmed the findings of the Trial Court on re-appreciation of evidence and dismissed the appeal.

5. Heard Mr. Ranade, learned counsel appearing for the Appellants and Mr. Thatte, learned counsel appearing for the Respondent Nos.1(b) to 1(e).

6. Mr. Ranade, learned counsel appearing for the Appellant submits that the substantial question of law which arises in the present case is that the plaintiffs have come with the case of a previous partition of 25th January, 1985 which issue has been negated by both the Courts. He submits that once the plaintiffs have failed to establish the case of the previous partition of 1985, the suit is liable to be dismissed. He points out to the pleadings in the plaint to substantiate that the case of the plaintiffs for partition was based upon the previous partition of the year 1985.

7. *Per contra*, Mr. Thatte, learned counsel appearing for the Respondent Nos.1(b) to 1(e) would submit that once the previous partition is not proved there is no partition at all between the parties and in such an event, the suit being for partition the Trial Court has rightly partitioned the joint family properties and determined the share of the parties.

8. Considered the submissions and perused the record.

9. The plaintiffs had come with a case that till the year 1985 there is a joint family of the plaintiffs and the defendant Nos.1 to 5 and subsequently during the life-time of their father on 25th December, 1985 in the presence of the respectable persons from the community, there was a partition between the plaintiffs and the defendant Nos.1,2,4 and 5 which was reduced in writing. The case of the plaintiffs is that the defendants are obstructing the plaintiffs from enjoying the benefits of the properties which are allotted to his share and as such filed the present suit. The substantive relief claimed by the plaintiffs is partition by metes and bounds of the suit properties described in Schedule 1A, 1B, 1C and 1D and for separate possession of their shares. The other relief which was sought while partitioning the properties, the properties which formed part of the partition-deed of 25th December, 1985 should be allotted to the share of the

plaintiffs. Though the plaintiffs had come with the case of previous partition of the year 1985, the relief which was sought was of partition of all the properties and that the properties which were allotted in the earlier partition of 1985 by allotted to the share of the plaintiffs. This previous partition of 1985 has obviously not being admitted by the defendants. The plaintiffs have failed to prove the earlier partition of the year 1985. That being so, considering that the properties are admittedly joint family ancestral properties of the parties, the plaintiffs even otherwise were entitled to partition of the joint family properties. It needs to be noted that in the suit for partition the plaintiffs and the defendants are interchangeable and even if, the plaintiffs have not been able to establish the previous partition of the year 1985, the fact remains that the properties being the joint family properties the plaintiffs as well as the defendants are entitled to a share in the suit properties. It cannot be said that there was no substantive relief of partition and separate possession sought. The prayer clause (b) in fact sought allotment of those properties to his share which according to him, were allotted in the partition of the year 1985. Once the previous partition between the parties is not proved and the nature of the properties as joint family properties having been proved, the Trial Court as well as the Appellate Court has rightly directed the partition of the properties between the plaintiffs

and the defendants and have determined the shares accordingly. No other submission has been raised across the bar except one discussed above. In light of the above, no substantial question of law arises, Appeal stands dismissed.

10. In view of the disposal of the Appeal, Civil/Interim Applications, if any, taken out in this Appeal, does not survive and same is disposed of.

[Sharmila U. Deshmukh, J.]