

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 790 OF 2017

Manik Bhimrao Kolawale and Others. ...Appellants.

Versus

Santosh Haridas Kolawale and Others. ...Respondents.

*Mr. Sarang S. Aradhye, Ms. Gauri Velankar, Mr. Shantanu Gurav and Ms. Shruti Kothavade and Mr. Samarth Chordia for the appellant.
Mr. A. A. Joshi for respondent no. 1.*

Coram : Sharmila U. Deshmukh, J.

Date : February 2, 2024.

P. C. :

1. Being dissatisfied by the judgment dated 24th July 2017 passed by the appellate Court in Regular Civil Appeal No. 79 of 2012 by which the appeal and the cross-objections filed by original defendant no.4 came to be rejected thereby confirming the judgment and decree of trial Court dated 10th April 2012 decreeing the suit, the original defendant nos. 1 and 2 are before this Court.

2. Facts of the case are that the suit was filed seeking partition of suit property bearing Gat No. 215 admeasuring 6-Hectare 83-Are situated in District Solapur. The suit property originally belonged to defendant nos.3 to 10. In the year 2008, defendant no.3 sold his

undivided share in the suit property to defendant nos. 1 and 2. The defendant nos. 4 to 10 sold the remaining portion to the plaintiff. The case of plaintiff was that since the year 2008, the plaintiff is in possession of the eastern portion of the property while defendant nos.1 and 2 are in possession of the western portion of the suit property. It was pleaded that as undivided share was sold, the boundaries were not fixed and partition was sought.

3. Defendant nos. 1 and 2 resisted the suit contending that the sale deed by which the plaintiff purchased portion of the suit property is void and illegal and no possession has been handed over to the plaintiff.

4. The parties went to trial. The trial Court by its judgment dated 10th April 2012 decreed the suit directing partition of the suit land to be effected. As against this, original defendant nos. 1 and 2 preferred an appeal. The appellate Court held that defendant nos. 1 and 2 have failed to prove that the sale deed of plaintiff is void and answered the issue against defendant nos. 1 and 2. The Appellate Court further held that the defendant nos. 3 to 10 have clearly admitted in the written statement that they have sold their undivided share in the suit property to the plaintiffs. Based on the pleadings and evidence, the Appellate Court dismissed appeal.

5. Heard learned counsel appearing for the appellant and learned counsel appearing for respondent no. 1.

6. Learned counsel appearing for the appellant would submit that the finding of trial Court that no specified portion of the property was sold would lead to a difficult position inasmuch as the plaintiff has also submitted that he has his own land adjacent to the eastern portion of the suit property and it would be convenient for him to make use of the land. He submits that the plaintiff had no right to ask for partition of the suit property and that the substantial question of law which arises is whether the alienee of undivided portion of a joint family property is entitled to seek partition.

7. Considered the submissions and perused the record

8. The trial Court on the basis of evidence on record has held that the plaintiff has established the purchase of portion of the suit property from defendant nos. 4 to 10. The trial Court considered that the defendants had appeared before the Court and admitted the case of plaintiff. Trial Court held that as defendant nos. 4 to 10 have sold their undivided share to the plaintiff, it was not open for them to sell any specific share and as such had directed the partition of the suit property. It is well settled that in respect of the undivided joint family

property, the shares are not defined. It is open for a co-parcener to sell his undivided share in the ancestral property without the consent of other co-parceners, however, the right which enures to the purchaser is to seek partition of the property, which the plaintiff has done. In the present case as the shares have not been defined and there is no partition by metes and bounds, the co-parcener cannot sell any specific portion of the suit property and all that he alienates is his undivided share in the ancestral property.

9. Considering the settled position in law, the trial Court has rightly decreed the suit and directed the partition. The appellate Court on re-appreciation of evidence has confirmed findings of the trial Court.

10. In view of the above, no substantial question of law arises. Appeal is dismissed.

11. In view of the disposal of second appeal, civil/interim application(s) taken out in this appeal, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]