

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.403 OF 2020
WITH
IA/3528/2019 IN SA/403 OF 2020**

Sadashiv Akaram Mane	...Appellant
Versus	
Tukaram Akaram Mane	...Respondent

....
Mr. Umesh R. Mankapure, for Appellant.
Mr. Suryajeet P. Chavan, for Respondent.
....

CORAM : SANDEEP V. MARNE, J.

DATED : 19 MARCH 2024.

P. C. :

By this Appeal, Appellant challenges Judgment and Decree dated 24 October 2019 passed by the Principal District Judge, Sangli in Regular Civil Appeal No.10 of 2013. First Appellate Court has dismissed Appeal filed by the Appellant and has confirmed decree dated 30 November 2012 passed by the Jt. Civil Judge, Junior Division, Wada in Regular Civil Suit No.79 of 2008. By it's decree, the trial Court injuncted Appellant-Defendant from disturbing Plaintiffs possession of the suit properties.

2. It appears that the suit property was jointly purchased by Plaintiff, Defendant and their two brothers. Plaintiff claims that there was oral partition in the year 1981 by which, land on the Northern side was allotted to his share, whereas the land on the Southern side was

allotted to the Defendant. That two brothers were allotted their respective shares between the lands of Plaintiff and Defendant. Plaintiff filed Regular Civil Suit No.79 of 2008 seeking injunction against Defendant from disturbing his possession as well as from challenging Plaintiff's ownership in respect of suit property. The Defendant appeared in the suit and filed written statement claiming that the earlier oral partition was reduced in writing in the form of document dated 17 June 2006 under which, the land towards Northern side was in fact allotted to the share of the Defendant. This is how Plaintiff and Defendants were at loggerheads about the location of land in which both of them claimed rights. Trial Court accepted the theory of the Plaintiff about oral partition in 1981 and about allotment of share to him towards Northern side and partly decreed the suit injuncting Defendant from disturbing Plaintiff's possession of the land. First Appellate Court has proceeded to dismiss the Appeal filed by the Appellant.

3. I have heard Mr. Mankapure, the learned counsel appearing for Appellant and Mr. Chavan, the learned counsel appearing for Respondent.

4. Mr. Mankapure would submit that the land has been purchased by 4 brothers jointly and that therefore injunction could not have been granted by the Trial Court in favour one co-owner against the other. He would further submit that the Trial Court did not frame any issue with regard to partition and in absence of frame of such issue, the finding of partition could not have been recorded. Alternatively he would submit that partition actually took place on 17 June 2006 under which, the land on the Northern side was in fact allotted to Defendant's share. Taking me through findings recorded by the First Appellate

Court in paragraph No.15 of it's order, Mr. Mankapure would submit that the findings of the First Appellate Court in paragraph No.15 (b) admission of oral partition of 1982 by Defendant is factually incorrect and hence perverse. That Appellant had never admitted that any partition took place in the year 1982. He would therefore submit that since the Judgment of the First Appellate Court proceeds on erroneous and non-existent admission, the same suffers from vice of non-application of mind.

5. I have considered the submissions canvassed by Mr. Mankapure. Perusal of the pleadings in the suit filed by Plaintiff seeking injunction and negative declaration was premised on assertion that that an oral partition of the land took place in the year 1982, under which, the land on the Northern side was allotted to Plaintiff's share. Defendant filed written statement and did not dispute the partition or that it was in joint possession of four brothers. Defendant did not take a plea that the suit property was never partitioned or that it was in joint possession of four brothers. The Defendant contended in paragraph No.6 of the written statement that there was oral partition between Plaintiff and Defendant. In paragraph No.7, Defendant however claimed that oral partition was reduced in writing in the form of document dated 17 June 2006, under which the land on the Northern side came to the share of Defendant. Thus, the written statement itself proceeded on a specific admission that there was oral partition of the suit property. In that view, submission of Mr. Mankapure that land is possessed jointly by all 4 brothers and that no injunction could be granted in favour of one co-owner against another, cannot be countenanced. Once Defendant himself admitted that there was a partition, narrow controversy that remained to be adjudicated by the

Trial Court was about the exact location where the shares of Plaintiff and Defendants are situated. Trial Court has conducted that inquiry both by appointing a Court Commissioner as well as by considering documents placed on record by Plaintiff. It appears that Plaintiff produced electricity bills in respect of two shades constructed by him on Northern portion of the land. The said electricity bills were from year 1999 onward. The said bills conclusively proved that the Plaintiff is possessing Northern side of the land atleast since 1999. Court Commissioner, in his report further confirmed the fact that the Northern portion of the land is indeed in possession of the Plaintiff.

6. Thus, upon admission given by the Defendant that there was oral partition between Plaintiff and him, the limited remit of enquiry before the Trial Court was about location of shares of Plaintiff and Defendant. Said enquiry is a question of fact, which is decided in Plaintiff's favour.

7. So far as findings recorded by the First Appellate Court in paragraph No.15 of the Judgment are concerned, it cannot be stated that the findings in paragraph No.15(b) about admission on the part of Defendant about oral partition is entirely incorrect or perverse. Defendant admitted in the written statement that oral partition took place. However he maintained silence about year in which said oral partition had taken place. It therefore cannot be stated that the First Appellate Court did not apply it's mind to the pleadings or evidence on record. No perversity can therefore be traced in the Order of the First Appellate Court.

8. After considering overall conspectus of the case, I am of the view that no substantial question of law is involved in the Appeal. The

Second Appeal is accordingly rejected. Since the Appeal is disposed of nothing survives in the interim application and it is also disposed of.

SANDEEP V. MARNE, J.

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