

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 521 OF 2024
WITH
CIVIL APPLICATION NO. 1702 OF 2019
IN
SECOND APPEAL NO. 521 OF 2024

Mr. Vijay Gharat a/w. Mr. Kiran Patil, for Appellant/Applicant
Mr. Ashish Gabhale i/b. Jay and Co., for Respondent.

CORAM : GAURI GODSE, J.
DATED : 26th AUGUST 2024

ORDER:

1. Heard learned counsel for the appellant. This second appeal is preferred by defendant no.2 to challenge the concurrent judgments and decrees for partition and separate possession. Learned counsel for the appellant submits that as per the plaintiffs' case, there was already partition effected in the year 2000. He submits that after partition, the parties started enjoying independent shares. He thus submits that once the plaintiffs admitted that there

was partition effected in respect of the suit property they were not entitled to seek partition. He submits that the crucial fact admitted by the plaintiffs regarding the partition of the year 2000 is not correctly appreciated by both courts. He thus, submits that the Second Appeal would require consideration on the aforesaid points.

2. I have perused the papers of the Second Appeal. Considered the submissions made on behalf of the appellant. The relation between the parties is not disputed. It is further not disputed that the suit properties are joint family properties of the parties. A perusal of the reasons recorded by both the courts indicate that the plaintiffs contended that in the year 2000 there was a family arrangement between the parties. However, there was a dispute between the parties, hence, the plaintiffs called upon the defendant for actual partition by metes and bounds.

3. The defendant though claimed that there was a partition in the year 2000, no documents were produced to support the contentions that the properties were actually partitioned by metes and bounds. There was no document to show the division of the land and its effect on the revenue records. There is a house property which also is not partitioned by metes and bounds. Hence, the trial court disbelieved the theory of prior partition in the year

2000. Thus, the trial court granted a decree for partition and separate possession. In the appeal preferred by the appellant, the findings recorded by the trial court are confirmed. The First Appellate Court has also examined the pleadings and evidence on record and confirmed the decree for partition and separate possession. In view of the admitted facts and the concurrent findings recorded by both courts, I do not find that the grounds raised on behalf of the appellant would require any consideration in the Second Appeal.

4. Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed. In view of the dismissal of the Second Appeal, pending Civil Application No.1702 of 2019 and Civil Application No. 1701 of 2019 are dismissed as infructuous.

(GAURI GODSE, J.)