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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 28 OF 2024

WITH

INTERIM APPLICATION NO. 1456 OF 2024

IN

SECOND APPEAL NO. 28 OF 2024

Shankar Tatya Karle Through
Legal Heirs

.....Appellant

Vs.

Balu Babu Karle Through His Legal
Heirs

.....Respondent

Mr. Vijay B. Dighe for the appellant
Mr. Sidheshwar Biradar for the respondent

CORAM : GAURI GODSE, J.

DATE : 11th JUNE 2024

ORDER:

1. This second appeal is filed by the original defendants to challenge the concurrent Judgments and Decrees for partition and separate possession.

2. Learned counsel for the appellants submits that the properties

belonging to the joint family were partitioned, and the plaintiffs were given a share in respect of the properties situated at Chandus village. He, therefore, submits that the suit properties belong to the appellants, and they are in exclusive possession, being exclusive owners of the suit properties. He submits that the plaintiffs have no concern with the suit properties. He further submitted that the plaintiffs also admitted that there was a partition of the original joint family properties. It is also submitted that the suit was hit by a non-joinder of necessary parties as the third son of Laxman, i.e. Genu, was not added as a party defendant in the suit.

3. I have perused the record. The issue with regard to prior partition has been disbelieved by the Trial Court. The findings with regard to the suit properties being ancestral property are confirmed by the First Appellate Court. The findings recorded by the Trial Court in paragraph 36 of the Judgment refer to the oral evidence relied upon by the defendants to support the contention regarding earlier partition. It appears that except for oral contention that there was a prior partition, no documents were produced on record in support of the said

contention. The First Appellate Court has dealt with the objection on non-joinder of necessary parties. The Appellate Court has held that Genu was given in adoption and, hence, did not continue as a member of the joint family of Laxman. Hence, the objection on the ground of non-joinder of necessary parties was disbelieved by the Appellate Court. I do not find any reason to interfere with the said finding of fact recorded by the First Appellate Court.

4. With regard to the prior partition sought to be argued by the learned counsel for the appellants is concerned, the findings of fact recorded by the Trial Court are confirmed by the First Appellate Court and are based on the appreciation of the evidence and documents on record. Consideration of the said arguments would amount to re-appreciating the facts and evidence on record, which is not permissible under Section 100 of the Code of Civil Procedure, 1908.

5. The First Appellate Court has also considered the documents regarding revenue entries and the consolidation scheme to confirm the findings regarding the suit properties being ancestral properties. The only opposition to the prayer for partition is based on an earlier

partition, which is disbelieved by both the Courts. Thus, the grounds raised on behalf of the appellants are based on facts and evidence on record. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

6. In view of the dismissal of the second appeal, Interim Application No. 1456 of 2024 is dismissed as infructuous.

[GAURI GODSE, J.]

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