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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 551 OF 2024
WITH
INTERIM APPLICATION NO. 12537 OF 2024
IN
SECOND APPEAL NO. 551 OF 2024**

Late Anil Dattatray Patil
Since Deceased through His
Legal Heirs and ors

.....Appellants

Vs.

Eknath Balku Patil and others

.....Respondents

Mr. S. S. Patwardhan a/w Mr. Ajit M. Savagave for the appellants
Mr. Tejpal Ingale i/b Mr. Umesh H. Pawar, Mr. Sagar Sonawane for the
respondents

CORAM : GAURI GODSE, J.

DATE : 4th DECEMBER 2024.

ORDER:

1. Heard learned counsels for the parties. This appeal is preferred by the original defendants to challenge the concurrent judgments and decrees granting partition and separate possession.

2. Learned counsel for the appellants submits that the suit properties are the plots which are allotted in the name of Dattatraya

Patil who is appellants' predecessor in lieu of acquisitions of land under the project affected persons for rehabilitation. He submits that different plots were allotted in the name of Dattatraya, Balaku and Ganpati which indicates that there was already partition between the parties and thus the suit lands allotted in the name of Dattatraya were independent lands allotted in lieu of the Dattatraya's property. Learned counsel relied upon the allotment of house properties independently in the name of the name of Dattatraya, Balaku and Ganpati to support his submissions that there was partition amongst the three brothers. He thus submits that separate allotment in the name of three brothers was a sufficient evidence to accept the partition between the parties. He thus submits that the second appeal would require consideration on the point of incorrect appreciation of evidence on record which indicated a partition between the parties.

3. Learned counsel appearing for the respondents supports the impugned decrees. He submits that the name of Dattatraya was entered at the time of allotment of the land as Karta of the joint family property. He submits that separate allotment in favor of three brothers was in respect of only house properties. He submits that there is no partition amongst three brothers, and thus allotment made in the name

of Dattatraya as Karta of joint family would not give him exclusive right in respect of the suit property. Learned counsel for the respondent therefore submits that no fault can be found in the reasons recorded by both the courts, granting a decree for partition and separate possession.

4. I have considered the submissions made by both the parties. Perused the impugned judgments. It is not in dispute that the suit properties are the allotted lands in lieu of acquisition of land belonging to the original holder, Rama. Dattatraya, Balaku and Ganpati are the three sons of Rama. There is no evidence produced on record to indicate that there was partition amongst three sons of Rama. A perusal of the reasons recorded by both the courts indicates that Dattatraya's name was entered as Karta of the joint family. Learned counsel for the respondents is right in submitting that separate allotment in the name of three sons of Rama was only in respect of the house properties. Thus, the allotment made in the name of Dattatraya for alternate land would not give him any exclusive right in respect of the suit property. Both Courts relied upon the revenue record and the corrigendum issued by the Deputy Director, Rehabilitation, entering names of heirs of Dattatraya, Balaku and Ganapati in respect of suit lands. In view of

the aforesaid facts, the grounds raised on behalf of the appellants would not require any consideration by this court.

5. Both the courts have thoroughly examined the evidence on record and concurrently held that the suit lands were allotted in lieu of acquisition of the lands originally belonging to Rama. I do not find any illegality or perversity in the reasons recorded by both of the Courts for holding the suit lands as joint family properties.

6. The arguments raised on behalf of the appellants would require re-examination of the evidence, which is not permissible under section 100 of Code of Civil Procedure, 1908. The second appeal does not raise any substantial question of law. Hence the second appeal is dismissed.

7. In view of dismissal of the second appeal, Interim Application No. 12537 of 2024 is disposed of as infructuous.

8. At this stage learned counsel for the appellants seeks extension of the interim order of status-quo to enable the appellants to approach the Hon'ble Apex Court.

9. The impugned decree is for partition separate possession, hence

actual handing over of physical possession shall remain stayed for a period of four weeks subject to appellants not creating any third-party interest in the suit property.

10. It is clarified that partition proceedings shall continue..

[GAURI GODSE, J.]