



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 SECOND APPEAL NO. 220 OF 2014

NARAYAN AMBADAS MUTHAL

VERSUS

VITTHAL AMBADAS MUTHAL AND OTHERS

WITH CIVIL APPLICATION NO. 3333 OF 2014
IN SA/220/2014

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Advocate for Appellant : Mr. Salunke V. D.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 04.11.2025

PER COURT :-

1. Heard learned counsel Mr. Salunke for the appellant.
2. Present second appeal is arising out of concurrent findings of facts in non-suiting the appellant/original plaintiff in Regular Civil Suit No.118 of 2004 for partition and separate possession. The suit is contested on plea of oral partition in the year 1990 which is reflected from mutation entry No.67. The respondents/defendants did not lead oral evidence despite opportunity.
3. Appellant's suit was dismissed by the Trial Court. While confirming the decree, the Lower Appellate Court recorded findings in respect of mutation entry and oral partition in

favour of the appellant. Under these circumstances, following substantial questions of law are involved in second appeal :

(i) Whether concurrent findings of facts recorded by both Courts below are sustainable for want of evidence to show oral partition in the year 1990 ?

(ii) What is probative value of the mutation entry No.67 which is not corroborated by any oral evidence by the defendants and why adverse inference be not drawn for not leading the evidence in view of *Vidyadhar Vs. Manik [(1990) 3 SCC 573]* ?

(iii) Whether appellant can be non-suited for not including all the joint family properties in common hotchpot, more particularly, when there is no oral evidence led by the defendants ?

4. Issue notice to the respondents for final disposal at the admission stage as the appeal is of 2014. This Court shall decide it finally on the next date.

5. Call for Record and Proceedings from the concerned Court.

6. Appellant is permitted to place on record relevant documents as well as paper book.

7. List this matter on 10.12.2025 for final hearing at the admission stage.

Civil Application No.3333 of 2014

8. Applicant seeks to condone the delay in bringing legal heirs of respondent No.9 Manikrao Muthal on record. Despite service on the proposed heirs, none appears. The cause of action survives against heirs of deceased respondent.

9. Civil application is allowed in terms of prayer clauses "A" and "B".

10. Necessary amendment shall be carried out.

(SHAILESH P. BRAHME, J.)

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