



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 398 OF 2018

Rangnath Kashinath Pingale & anotherAppellants

VERSUS

Shivaji Baburao Pingale & anotherRespondents

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Mr. R. N. Dhorde, Senior Counsel instructed by Mr. V. R. Dhorde,
Advocate for the Appellants.

CORAM : R. M. JOSHI, J.
DATE : 6th AUGUST, 2025.

PER COURT :

1. Heard learned Senior Counsel for the Appellants.
2. This Appeal under Section 100 of Code of Civil Procedure takes exception to the concurrent findings recoded by the Trial Court and the First Appellate Court while dismissing the suit filed by the Appellants.
3. The facts as they appear from the record indicate that Plaintiffs filed suing bearing Regular Civil Suit No. 35/2004 seeking declaration of ownership and perpetual injunction in respect of the agricultural land admeasuring 20 Acres and 11 R from Survey No.

157AA situated at Taraf Pingale, Tq. & Dist. Beed. There is no dispute about the fact that original Survey No. 157 was owned by Abaji. His two sons Baburao and Kashinathrao succeeded the suit property. The record indicates that in the year 1950, mutation entry was taken in the name of Baburao and Kashinathrao showing them to be the equal owners of Survey No. 157. Further, admittedly, Survey Nos. 157A and 157AA were divided and separate 7/12 extracts were prepared by the revenue authority. This reflects that both the parties were having equal share in the suit property. In this backdrop, it is the contention of Plaintiffs, on the basis of writing issued by Baburao dated 28.12.1967 that there was partition and the eastern side portion of Survey No. 17 from nala belongs to Kashinathrao and the remaining portion belongs to Baburao. The learned Trial Court has not accepted the said contention of Plaintiff on the ground that the partition deed is not registered and it is not a memorandum of partition. Apart from this, finding is recorded to the effect that this partition deed was never implemented.

4. Learned Senior Counsel appearing on behalf of the Plaintiffs submits that both the Courts below ought to have taken into consideration the partition deed dated 28.12.1967 which came

to be executed by the predecessor of Defendants. According to him, the said deed of partition clearly indicates the arrangement between the parties. According to him, there was no reason to deny declaration declaration on the basis of this deed of partition.

5. Perusal of record indicates that Survey No. 157 came to be divided into two portions i.e. 157A and 157AA. Separate 7/12 extracts were also prepared by revenue authorities. Mutation entry indicates that both Baburao and Kashinathrao were entitled for equal share in Survey No. 157. Undeniably this revenue record continues to remain in force till 1978. Even if it is accepted that any such document came to be executed, firstly, it being not the registered partition deed, would not bind the parties and secondly, there is nothing on record to indicate that the said deed of partition was even acted upon.

6. The concurrent findings of fact recorded by both the Courts below therefore cannot be held as perverse. Hence, no substantial question of law involves in this Appeal.

7. Appeal stands dismissed.

(R. M. JOSHI)
Judge

dyb