



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 524 OF 2022
WITH
CIVIL APPLICATION NO. 1232 OF 2024
IN SA/449/2023
WITH
CIVIL APPLICATION NO. 11180 OF 2022
IN SA/524/2022
WITH
SECOND APPEAL NO. 449 OF 2023**

Shaikh Rahim Shaikh Mohiyoddin

VERSUS

Khamrubi Sayyad Pashu And Ors.

Mr. S. S. kazi h/f Ms. F. S. Kazi, Advocate for appellant
Mr. D. B. Bhange, AGP for the respondent/State
Mr. G. G. Suryawanshi, Advocate for respondent Nos. 2, 3 & 5

CORAM : R. M. JOSHI, J.

DATE : 03rd January, 2025

PER COURT :-

1. These appeals are filed taking exception to the judgment and decree passed in RCS No. 88/2015 by Trial Court which came to be confirmed by the Appellate Court in RCA No. 10/2018. Decree of partition of the suit property came to be passed by the Trial Court.

2. The facts which led to filing all these appeals can be narrated in brief as under:

Plaintiffs filed suit for partition and separate possession of the

share of the plaintiffs and defendants in respect of the suit property. Plaintiffs contended that these suit properties were owned by their father Mohiyoddin, who died on 03.08.2005. The plaintiffs asked for share in the suit property which was denied and hence suit came to be filed for partition.

3. Defendant No. 1 did not appear before the Trial Court and suit proceeded exparte against him. Defendant No. 2 & 3 filed written statement at Exhibit 22. The relationship between the parties is admitted. It is further claimed that there was already a partition effected by Mahiyoddin during his life time and as such suit is not maintainable. Parties led evidence. Trial Court as well as First Appellate Court accepted the case of the plaintiffs and decreed the suit.

4. Learned counsel for the appellants submits that trial Court as well as First Appellate court have failed to take into consideration evidence on record and as such findings recorded by them are perverse.

5. Perusal of the pleadings indicate that plaintiffs' case is of having no partition whereas defendant Nos. 2 & 3 have claimed previous partition. The evidence indicates that defendant No. 3, in his cross examination, admitted that during the life time of his father, the suit

property was in his name. Similarly, he accepts that after the death of his father, the property was mutated in the name of plaintiffs as well as defendant Nos. 2 and 3 and that there is no challenge to the said entry. Though, at one hand it is sought to be contended that it was oral partition however, in evidence before the Court is about the partition being effected on a stamp paper. Admittedly, no such document is placed on record. This Court finds no substance in the contention of the learned counsel for the appellants that the evidence of defendant No. 3 Shaikh Rahim s/o Shaikh Mohiyoddin is relevant for the decision of the present case.

6. Since, defendant Nos. 2 & 3 have failed to substantiate their contention about previous partition and findings recorded by both Courts below are in consonance with the evidence on record, for want of perversity in the findings, no substantial question is involved in the appeal. Appeal, therefore, stands dismissed.

7. Learned counsel for the appellant submits that the interim order passed be extended for a period of six weeks to enable the appellant to challenge the order passed by this Court before the Hon'ble Supreme Court. Learned counsel for the respondents opposes such prayer.

8. Interim relief to continue for a period of six months from today.

9. All pending Civil Applications stand disposed of.

(R. M. JOSHI, J.)

bsj