

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 598 OF 2017
WITH
CIVIL APPLICATION NO. 619 OF 2016
WITH
INTERIM APPLICATION (ST) NO. 18738 OF 2024
WITH
INTERIM APPLICATION (ST) NO. 18739 OF 2024
IN
SECOND APPEAL NO. 598 OF 2017**

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Nivrutti Laxman Gaikwad (Since ... Appellants/Applicants
Deceased) Through LRs

vs.

Hanumant Laxman Gaikwad and Ors. ... Respondents

Mr. Shailendra /s. Kanetkar for the Appellants/Applicants.

Mr. Sagar Patil i/b Vinayak Patil for Respondent Nos.1 to 7.

CORAM : GAURI GODSE, J.

DATED : 25th FEBRUARY 2025

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by defendant nos.1,2 and 4 to challenge the judgment and decree passed by the first appellate court. The trial Court had partly decreed the suit for partition and separate possession only in respect of one of the suit properties. Hence, the plaintiff had preferred the first appeal. The first appellate court modified the trial

Court's decree and granted share in respect of all the suit properties. Hence, this second appeal filed by defendant nos.1, 2,3 and 4.

2. Learned counsel for the appellant submits that there were revenue records produced, which clearly indicated that all the suit properties were partitioned amongst Laxman and his three sons. He submits that Gat No.711 was allotted to the share of Laxman. Hence, the trial Court rightly decreed the suit only in respect of Gat No.711. He submits that the first appellate court erred in disbelieving the revenue record, which supports the defendants' case that there was already prior partition effected amongst Laxman and his three sons. He submits that the mutation entries produced on record by defendant no.3 were not controverted by the plaintiffs in their oral evidence. He submits that the plaintiffs failed to explain the effect of the revenue record, indicating the properties entered in the individual names of the three sons of Laxman as per the share allotted to them. Learned counsel for the appellants, therefore, submits that the second appeal would require consideration on mis-appreciation of the evidence on record.

3. I have perused the papers of the second appeal. It is not in dispute that the Laxman was the original holder of the properties.

The relations between the parties is also not in dispute. Laxman had three sons and three daughters. The suit was filed by two sons and three daughters alongwith some of the grand sons of Laxman. The suit was filed against defendant no.1, i.e. third son, his wife and his son. None of the present appellants appeared in the suit and thus, the suit proceed ex-parte against them. Defendant no.6 i.e. grand son of defendant no.1 filed written statement and contended that there was already prior partition and thus opposed grant of any partition. However, defendant no.6 did not lead any evidence and failed to cross-examine the witness of the plaintiffs. Based on the revenue record, the trial Court held that except Gat No.711, there was partition with regard to the remaining properties. Hence, partition was granted only in respect of Gat No.711.

4. The first appellate court disbelieved the theory of prior partition based on the revenue records. The first appellate court held that only defendant no.6 filed written statement. However, he failed to lead any evidence to support the theory of prior partition. Hence, for want of any supporting evidence the first appellate court disbelieved the theory of prior partition based on only revenue records.

5. A perusal of the reasons recorded by both the Courts indicate

that the plaintiffs contended that there was a family arrangement amongst the parties and thus, the entries in the revenue record based on family arrangement would not amount to partition by metes and bounds. The first appellate court, therefore, disbelieved the theory of prior partition and granted partition in respect of all the suit properties.

6. The reasons recorded by the trial Court does not indicate that there was any partition by metes and bounds amongst the Laxman and his three sons. Thus, any other arrangement amongst the sons of Laxman or any other family arrangement amongst the three sons and their family would not amount to partition by metes and bounds amongst the three sons and three daughters of Laxman.

7. The appellants never appeared and filed any written statement in the trial Court. Learned counsel for the appellants, however, submits that defendant no.3 expired during the pendency of the second appeal. He submits that the application for bringing on record names of heirs and legal representatives includes name of defendant no.6, who had filed written statement and opposed the suit claim. He, therefore, submits that in any case, defendant no.6 would be entitled to challenge the impugned decree and support his contentions in the trial Court that except Gat No.711 all other

properties were already partitioned. I do not find any substance in this argument. Defendant no.6 though had filed written statement, failed to lead any evidence. Defendant no.6 has not controverted the oral evidence by cross-examining the witness examined on behalf of the plaintiffs. Thus, for want of any supporting evidence regarding prior partition, no fault can be found in the reasons recorded by the first appellate court in granting partition and separate possession in respect of all the suit properties. I, therefore, do not see any reason to interfere in the impugned judgment.

8. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

9. In view of the dismissal of the second appeal, pending applications are disposed of as infructuous.

(GAURI GODSE, J.)