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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 896 OF 2017
WITH
CIVIL APPLICATION NO. 1894 OF 2017
IN
SECOND APPEAL NO. 896 OF 2017**

Pandurang Chandru Pukale ... Appellant/Applicant

vs.

Shri Jyotiram Chandru Pukale and ... Respondents
Ors

Mr. A.R. Joshi for Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATED : 7th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by defendant no.3 to challenge the concurrent judgments and decrees granting partition and separate possession.

2. Learned counsel for the appellant submits that the admissions given in cross examination of the plaintiff and his witnesses indicate that the plaintiff has accepted prior partition. Learned counsel relies upon admission in the cross examination which is referred to by the

first appellate court. He submits that the part of the property received by the plaintiff in the prior partition is already disposed of by the plaintiff. He therefore submits that the conduct of the plaintiff itself would indicate that the prior partition was acted upon. He, thus, submits that both the courts have not correctly appreciated the oral evidence which supports the appellant's contention that there was prior partition. He therefore submits that the second appeal would raise substantial questions of law on misappreciation of the oral evidence on record.

3. To consider the submissions made on behalf of the appellant, I have carefully perused the reasons recorded by both the courts. There is no dispute about the existence of a joint family nucleus. It is also not in dispute that the suit property belongs to the joint family. The ground to oppose partition is based on prior partition. Defendant no.3 filed a written statement, however, failed to adduce any evidence to support his contention of prior partition.

4. The first appellate court has thoroughly examined the oral evidence on record and held that the admission given by plaintiff and his witness would only indicate that the family arrangement was agreed between the parties; however, there is no evidence to indicate that there was partition by metes and bounds.

5. I have perused the reasons recorded by both the courts. The admission given by the plaintiff and his witness are considered by both the courts. It is not the appellant's case that there is any documentary evidence on record to show partition by metes and bounds. The argument raised on behalf of the appellant would require re-appreciation of the evidence, which is not permissible under Section 100 of the Civil Procedure Code.

6. I do not find any illegality or perversity in the reasons recorded by both the courts. 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, the pending civil application is disposed of as infructuous.

(GAURI GODSE, J.)