

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.727 OF 2002

Bharmu Appanna Danwade ...Appellant
Versus
Sidhappa Appanna Danwade & Ors. ...Respondents

WITH
CIVIL APPLICATION NO.668 OF 2007
IN
SECOND APPEAL NO.727 OF 2002

Bharmu Appanna Danwade ...Applicant
Versus
Sidhappa Appanna Danwade & Ors. ...Respondents

Mr. N. J. Patil, for the Appellant.

CORAM: MADHAV J. JAMDAR, J.
DATED: 02 JULY 2025

JUDGMENT:

1. Heard Mr. N. J. Patil, learned Counsel appearing for the Appellant.
2. The challenge in this Second Appeal is to the legality and validity of the Judgment and Decree dated 12th November 1993 passed by the learned Civil Judge, Junior Division, Kurundwad in Regular Civil Suit No.30 of 1987 as well as the Judgment and Decree dated 4th September 2000 passed by the learned Joint District Judge, Kolhapur in Regular Civil Appeal No.24 of 1994.

3. The Appellants before the First Appellate Court are Original Defendant Nos.2 and 4. The Appellant in this Second Appeal is Original Defendant No.2.

4. By the impugned Judgment and Decree of the learned Trial Court the Suit of the Plaintiff was decreed and it has been held that the Plaintiff is entitled to the $\frac{1}{7} + \frac{1}{56} + \frac{1}{42}$ share and separate possession of the suit property. The learned First Appellate Court dismissed the Appeal and confirmed the decree of partition.

5. A learned Single Judge by Order dated 17th October 2002 has framed the following substantial question of law :-

“Whether the Plaintiff Respondent No.1 could have filed a suit for partition as there is earlier partition dated 30th June 1967?”

6. Mr. N. J. Patil, learned Counsel for the Appellant submitted that there is earlier partition dated 30th June 1967. He submitted that there is a severance in the joint family properties and therefore the Suit bearing Regular Civil Suit No.30 of 1987 filed seeking partition is not maintainable. He therefore submitted that both the impugned Judgments and Decrees are required to be quashed and set aside and the said Suit is required to be dismissed. To substantiate his contention, Mr. N. J. Patil, learned Counsel pointed out partition deed dated 23rd July 1967.

7. At the outset, it is required to be noted that both the learned Trial

Court as well as the learned Appellate Court have recorded a concurrent finding that the said partition deed is a temporary arrangement. Both the Courts have held that there was no partition in between the Plaintiff and the Defendants by metes and bounds. Thus, in effect what both the Courts have held that the said partition as reflected in the partition deed dated 30th June 1967 has not been acted upon and it is merely an interim arrangement. Admittedly, the said partition deed is not a registered document and therefore the same cannot be read in evidence.

8. Accordingly, in view of the concurrent finding recorded by both the Courts that there was no partition in between the Plaintiff and the Defendants by metes and bounds, in accordance with the said partition deed dated 23rd July 1967 and as the suit properties continued to be the joint family properties, the Suit filed seeking partition in the year 1987 is maintainable.

9. Accordingly, there is no substance in the substantial question of law raised in this Second Appeal.

10. The Second Appeal is dismissed, however, with no order as to costs.

11. As the Second Appeal is dismissed, nothing survives in the Civil Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]