

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 918 OF 2015
WITH
INTERIM APPLICATION NO. 13924 OF 2023
IN
SECOND APPEAL NO. 918 OF 2015**

Rajaram Maruti Nikam (Since Deceased ... Appellants/Applicants
Through Legal Heirs)

vs.

Pandurang Maruti Nikam (Since ... Respondents
Deceased Through Legal Heirs) and
Ors.

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Mr. Vaibhav Sugdare a/w Shraddha Pawar for the
Appellants/Applicants.

CORAM : GAURI GODSE, J.

DATED : 25th FEBRUARY 2025

ORDER:

1. Heard learned counsels for the parties. This second appeal is preferred by defendant nos.1b and 1c to challenge the concurrent judgments and decrees for partition and separate possession.

2. Learned counsel for the appellants submits that the suit for partition and separate possession was filed for the properties except Gat No.441. He submits that even the plaintiff claimed exclusive ownership on Gat No.441. He further submits that the appellants

claimed exclusive ownership on Gat No.441 on the ground that said property was gifted by original owner Anubai in favour of Appa, i.e. predecessor in title of plaintiff nos.3 and 4. He submits that Appa had subsequently transferred the property in favour of defendant no.1, which was recorded in Mutation Entry No.1359. He submits that the said mutation entry was produced at Exhibit 158, which records name of defendant no.1 in respect of Gat No.441.

3. Learned counsel for the appellants submits that through the plaintiff never claimed partition and separate possession in respect of Gat No.441, both the Court have granted partition and separate possession in respect of the said property. He thus, submits that grant of partition in respect of the said property would amount to granting relief beyond the claim in the suit. To support his submissions learned counsel for the appellants relied upon the decision of the Hon'ble Apex Court in the case of ***Akella Lalitha Vs. Konda Hanumantha Rao and Anr¹***.

4. I have perused the papers of the second appeal. It is not in dispute that the original holder of the suit properties was one Anubai. Anubai was survived by only one daughter, Parvatibai. Plaintiff nos.1 and 2 and defendant nos.1 and 2 are sons of Parvatibai. Plaintiff nos.3 and 4 are sons of Appa, who was

1. 2022 SCC OnLine SC 928

Parvitibai's son. It is contended in the proceedings that Appa was absconding since 1969. Hence, he was not a party to the suit.

5. The plaintiffs prayed for partition and separate possession in respect of the suit property excluding Gat No.441. It was plaintiffs' contention that Gat No.441 was gifted to Appa and thus, the plaintiffs had exclusive ownership in the said property. Defendant no.1 also claimed exclusive ownership on Gat No.441. To substantiate his claim, defendant no.1 relied upon Mutation Entry No.1359. However, there is no dispute that the Gat No.441, originally belongs to Anubai and thereafter Parvatibai. The gift deed executed by Anubai and relied upon by the parties was not produced before the Court. The mutation entry relied upon defendant no.1 is examined by both the Courts. Based on the mutation entry, both the Courts disbelieved defendant no.1's case of acquiring any exclusive ownership over Gat No.441. Hence for want of any supporting evidence, claim of exclusive ownership of defendant no.1 on Gat No.441 was disbelieved. Since there was no dispute that property belongs originally to Anubai and thereafter, Parvatibai, both the Courts have granted partition and separate possession even in respect of Gat No.441.

6. The plaintiffs claim exclusive ownership of Gat No.441. Hence, granting a decree for partition and separate possession would amount to a lesser relief than claimed by the plaintiffs. The relief of partition and separate possession would therefore, not amount to a relief granted beyond the pleadings in a suit for partition and separate possession. Thus, in view of the facts of the present case, the legal principles relied upon by the learned counsel for the appellants as settled in the decision of *Akella Lalitha* would not be of any assistance to the arguments on behalf of the appellants.

7. Considering the concurrent findings recorded on the facts of the case, the second appeal would not require any consideration.

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

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

(GAURI GODSE, J.)