

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 107 OF 2018
WITH
CIVIL APPLICATION NO. 1402 OF 2017
IN
SECOND APPEAL NO. 107 OF 2018**

Shri Ananda Tukaram Jadhav ... Appellants/Applicants
(Abated) and Anr

vs.

Sou. Mangal Popat Chougule and Anr ... Respondents

Mr. Shubham Dhenge a/w.Mr. Manoj Patil for Appellants/Applicants.

Mr. Akshay Shinde for Respondent Nos. 1 and 2.

CORAM : GAURI GODSE, J.

DATED : 20th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the original defendants to challenge the concurrent judgments and decrees for declaration of plaintiffs' ownership and direction to the defendants to hand over possession to the plaintiffs.

2. Learned counsel for the appellants submits that the plaintiffs claim exclusive ownership in respect of the suit property on the ground that in partition between Shankar and Ananda suit property

was given to the share of Shankar. He submits that defendant no.1, i.e. Ananda and Shankar are brothers. He further submits that partition between Shankar and Ananda is not proved by any supporting evidence. He, thus, submits that in the absence of any evidence of partition between Shankar and Ananda, plaintiffs would not be entitled for exclusive ownership of the suit property. He submits that both the courts failed to consider that there was no proof of partition between Shankar and Ananda. He, thus, submits that the second appeal would require consideration on the ground of incorrect appreciation of evidence on record.

3. I have considered the submissions made on behalf of the appellants. Both the courts have decreed the suit in favour of the plaintiffs by relying upon the supporting evidence and the pleadings by plaintiffs. Defendants though filed written statement, failed to lead any oral evidence in support of their pleadings. The plaintiffs' witness is not cross examined by the defendants. There is no dispute that the suit property stands in the name of the plaintiffs being the heirs and legal representatives of Shankar. It is not disputed that the share allotted to defendant no.1, i.e. Ananda is sold by him to third party.

4. Based on the evidence on record which indicates that the suit

property stands in the name of plaintiffs, coupled with the oral evidence produced by the plaintiffs, both the courts recorded the concurrent findings of facts that plaintiffs are exclusive owners of the suit property received by them through their father. There is no dispute that the property originally belonged to Tukaram and Shankar had a share in the suit property.

5. In view of the admitted facts and the concurrent findings recorded by both the courts, the second appeal would not require any consideration by this court. There is no illegality or perversity in the reasons recorded by both the courts.

6. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed. In view of dismissal of the second appeal, the pending application is disposed of as infructuous.

(GAURI GODSE, J.)