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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 38 OF 2025

Shivaji Bhikoba Jadhav
(Since Deceased Thr. LRs)

.....Appellants

Vs.

Gangubai Baburao Jadhav
(Since deceased through LRs)

.....Respondents

Mr. S. S. Patwardhan i/b Mr. Ajay Raje Nimbalkar Advocate for the
Appellants

CORAM : GAURI GODSE, J.

DATE : 24th FEBRUARY 2025

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ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the plaintiffs in Regular Civil Suit No. 946 of 2005 to challenge the concurrent judgments and decrees dismissing the suit for partition in respect of properties described in schedule 'B' and for injunction in respect of the suit properties described in schedule 'C'.

2. Learned counsel for the appellants submits that the plaintiffs are in exclusive possession of the properties described in schedule 'C'. He

submits that there is no dispute that the plaintiffs are in exclusive possession of the properties described in schedule 'C'. He, therefore, submits that there was no reason for both the Courts to refuse the prayer for injunction protecting the plaintiffs' possession over the said properties. He submits that the second appeal would raise substantial question of law on the point whether injunction could have been refused only on the ground that there was no prayer for partition and separate possession in respect of the said properties.

3. I have perused the papers of the second appeal. The dispute between the parties is in respect of joint family properties described in three set of properties. The defendants had also filed a separate suit for injunction in respect of the properties described in schedule 'B'. There is no dispute that so far as the properties described in schedule 'B' are concerned, was sold by way of a registered sale deed by the original ancestor Bhika in favour of predecessor-in-title of the defendants, i.e. Babu. Both the suits were decided by a common judgment and both the suits were dismissed. The plaintiffs in the present suit prayed for partition and separate possession in respect of the properties described in schedule 'B'. However, the prayer for partition was refused as there was no challenge to the sale deed

executed by Bhika. The plaintiffs also prayed for an injunction to protect their possession with respect to the properties described in schedule 'C'. The prayer for injunction is based on the pleadings that they are in exclusive possession of the suit properties. However, there is no dispute that even those properties belong to the joint family. Hence, even if there was any dispute raised over possession of the said properties, the injunction is refused by both the Courts on the ground that there cannot be an injunction against the co-sharers of the property. In view of the admitted facts, I do not see any fault in the reasons recorded by both the Courts for refusing the prayer for partition as well as prayer for injunction.

4. There is no perversity in the reasons recorded in the impugned judgments. The second appeal does not raise any substantial question of law.

5. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]