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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 128 OF 2025
WITH
INTERIM APPLICATION NO. 1700 OF 2025
IN
SECOND APPEAL NO. 128 OF 2025**

Ashok Kisan Londhe and ors

.....Appellants

Vs.

Dilip Kisan Londhe

.....Respondent

Mr. Nikhil Pujari for the appellants

Mr. Sanjay P. Shinde for the respondent

CORAM : GAURI GODSE, J.

DATE : 14th FEBRUARY 2025

ORDER:

1. Heard learned counsels for the parties. This appeal is preferred by the defendants to challenge the concurrent judgments and decrees granting partition and separate possession.

2. Learned counsel for the appellants submits that defendant no. 3 was admittedly working and had his own independent income. He submits that the sale deeds in respect of the suit properties described in paragraphs E, F, G, H and I are the properties acquired in the name of defendant nos. 2 and 9 from the independent income of defendant

no. 3. He submits that, defendant no. 2 is the mother of defendant no. 3 and defendant no. 9 is defendant no. 3's wife. He, thus, submits that when admittedly defendant no. 3 was working and had his own independent income, the contention of the defendants that the sale of the aforesaid properties were from defendant no. 3's income in the name of defendant nos. 2 and 9 ought to have been accepted by both the Courts. He, further submits that reliance placed by both the Courts on the income from the joint family property i.e. survey no. 39/A was incorrect, in the absence of any supporting document. He, thus, submits that the findings recorded by both the Courts for accepting the aforesaid properties as joint family properties though the properties stand in the name of defendant nos. 2 and 9 amounts to incorrect appreciation of the evidence on record. He, therefore, submits that the second appeal would require consideration on the point that both the Courts have not correctly appreciated the evidence on record.

3. I have perused both the judgments to examine the contentions raised on behalf of the appellant. The relations between the parties is not in dispute. The defendants are not disputing the existence of the joint family of Kisan Londhe, his wife Sonubai-defendant no. 2 and their children i.e. the plaintiff and defendant nos. 3 to 8. There is also

no dispute that except for the properties claimed to have been purchased in the name of defendant nos. 3 and 9, there were other properties belonging to the joint family which are described in para 1A to 1D of the plaint. The only dispute raised by the defendants is on the properties described in plaint paragraphs E, G, H and I on the ground that they are independent properties of defendant nos. 1 and 9 purchased by defendant no. 3 out of his own independent income.

4. Both the Courts have examined the oral evidence led by the plaintiff and the evidence led by the defendant no. 1 to hold that there were joint family properties and out of the joint family nucleus, the properties in the name of defendant nos. 2 and 9 were purchased. The oral evidence regarding sale proceeds of survey no. 39/A abutting the national highway is considered by both the Courts to hold that the properties in the name of defendant nos. 2 and 9 were also purchased from the joint family income. The claim of defendants that properties in the name of defendant nos. 2 and 9 were purchased from the income of defendant no. 3 is not supported by any oral evidence by examining defendant no. 3. Defendant no. 3 has not stepped into the witness box to support the contentions of defendants that the properties in the name of defendant nos. 2 and 9 were purchased from his own

independent income. Defendant no. 1 has admitted that there was no partition of the joint family properties.

5. Both the Courts have thus referred to the evidence on record and after examining the admissions given by defendant no. 2 accepted the plaintiff's contention that the suit properties purchased in the name of defendant nos. 2 and 9 were purchased from the joint family income. The admissions given by DW 1 and DW 2 are considered as an important aspect to hold that all the suit properties are joint family properties. Thus, in the absence of any supporting evidence and more particularly any evidence by defendant no. 3, the defendants' contention that the suit properties in the name of defendant nos. 2 and 9 were purchased from independent income of defendant no. 3 is rightly not accepted by both the Courts.

6. The arguments raised on behalf of the appellants would amount to re-appreciation of the evidence on record which is not permissible under Section 100 of Code of Civil Procedure, 1908. A perusal of the reasons recorded by the trial Court and confirmed by the first Appellate Court indicate that they are based on appreciation of documentary as well as oral evidence on record. The failure on the part of defendant

nos. 2 and 9 to lead evidence to show that the properties were purchased in their name from their own income is referred to by both the Courts to disbelieve their case that they are their self acquired properties. Except for claiming that the properties were purchased from income of defendant no. 3, no evidence is produced to show that defendant nos. 2 and 9 had any independent income to purchase the properties as their self acquired properties. Thus, in the absence of any oral evidence by defendant no. 3, both the Courts have rightly disbelieved the defendants' contention that the properties in the name of defendant nos. 2 and 3 are independent properties of defendant nos. 2 and 9. I do not find any illegality or perversity in the reasons recorded by both the Courts.

7. The second appeal does not raise any substantial question of law.

8. Hence, the second appeal is dismissed.

9. In view of dismissal of second appeal, Interim Application No. 1700 of 2025 is disposed of as infructuous.

[GAURI GODSE, J.]