

defendant no. 1's father and Popat, the suit property was given to the share of defendant no.1. He therefore submits that the plaintiff has one-fifth share in the suit property being son of defendant no.1. He submits that both the courts have erroneously accepted that the suit property is self acquired property of defendant no. 1 and thus refused prayer for partition and separate possession. He thus submits that the second appeal would require consideration as the findings recorded for accepting that the suit property is self acquired property of defendant no. 1 is an erroneous finding in the absence of any supporting evidence.

3. Learned counsel for the appellant relied upon the cross examination of defendant no. 1 to support his submissions that the suit property was the ancestral joint family property.

4. I have perused the papers of the second appeal. The suit is filed on the ground that the plaintiff is entitled to partition and separate possession as the property belonged to the joint family of the plaintiff's grand father.

5. There is no dispute that the suit property originally belonged to the Majumdar family and the sale deed was executed in the name of Popat. The documents relied upon by the learned counsel for the appellant to contend that there was partition between Popat,

Rambhau and Haribhau could not indicate that it was ancestral joint family property which would give any right to the plaintiff to seek partition and separate possession from defendant no.1. i.e. Haribhau.

6. I have also gone through the cross examination of defendant no.1. The admissions given by defendant no. 1 is in respect of Popat's name entered in the revenue record as owner. Defendant no. 1 admitted partition between defendant no. 1, popat and Nanasaheb. The admission given by defendant no. 1 also refers to the original ownership with Majumdar family. The cross examination of defendant no.1 does not indicate that the suit property was the ancestral joint family property giving any right to the plaintiff to seek partition and separate possession.

7. The plaintiff claim in the suit property is through defendant no. 1 on the ground that it is a joint family property. Thus, there is no dispute that in partition between defendant no. 1 and his brother the suit property was entered in the name of defendant no. 1. Thus, in the absence of any pleadings and supporting evidence that the suit property was ancestral property and plaintiff would not be entitled to seek any right from defendant no. 1 during his life time. In view of the documents, entering defendant no.1's name in respect

of the suit property based on partition between defendant no. 1 and his brother, the plaintiff would not get any right to claim partition through defendant no. 1, during his life time.

8. Both the courts have rightly accepted the property as independent property of defendant no.1. The grounds raised on behalf of the appellant would therefore not require any consideration by this court. In view of the aforesaid facts concurrently accepted by both the courts, the second appeal does not raise any substantial question of law.

9. Hence, second appeal is dismissed.

10. In view of the dismissal of the second appeal, pending applications are disposed of as infructuous.

[GAURI GODSE, J.]