



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.154 OF 2022

Kuwadu Ramchandra Balki Vs. Sau. Kamlabai Gangadhar Zade and ors

*Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order*

Court's or Judge's Order

Mr. S. R. Deshpande, Advocate for appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 07.10.2025.

. The appellant is defendant No.1 in suit for partition filed against him by his sisters, who are respondent Nos.1 and 2 herein. The other respondents are defendant Nos.3 to 6. The parties will hereinafter be referred to as the 'plaintiffs' and 'defendants'.

2. The plaintiffs, who are sisters of defendant No.1, filed a suit for partition and separate possession, being Regular Civil Suit No.67 of 2009. In the said suit, defendant No.1 came up with a defence that there was an oral partition between his father-Ramchandra and himself, pursuant to which the suit property which comprises of land admeasuring 2.02 H.R., out of Gat No. 21/1, was given to the share of the defendant No.1. In order to prove the alleged oral partition, defendant No.1 had filed on record an application dated 01.06.1999, purportedly bearing the thumb impression of his father and the signatures of two attesting witnesses. However, a perusal of the evidence will demonstrate that photo copy

of this application was placed on record which was marked as Article-A during the course of evidence.

3. On the basis of the aforesaid application, the learned Advocate for the appellant contends that both the learned Courts have erred in not accepting the oral partition between the father and the son (defendant No. 1) prior to commencement of the Hindu Succession (amendment) Act, 2005.

4. This is the sole ground on which the suit for partition was opposed and in the present appeal also, substantial question of law is sought to be made out on the basis of the said document.

5. At the outset, only photocopy of application dated 01.06.1999 is filed on record. No steps are taken to lead secondary evidence with respect to the said document.

6. Apart from this, in view of Section 6 of the Hindu Succession Act, as amended by Hindu Succession (Amendment) Act, 2005, a prior partition must be evidenced either by a registered document of partition or by decree of Court. In view of law laid down by the Hon'ble Supreme Court in the matter of ***Vineeta Sharma...Vs...Rakesh Sharma***, reported in ***(2020) 9 SCC 1***, in exceptional circumstances, proof of partition other than partition arrived at by way of a registered document or decree of Court will also be admissible. However, the Hon'ble Supreme Court has directed that the evidence

regarding such partition should be of impeccable quality. Such does not appear to be the situation in the present case.

7. The learned Courts have referred to admission of the defendant No. 1 that, till the demise of his father, he was cultivating and was in possession of the suit land. The two witnesses to the application dated 01.06.1999 have also not stood the test of cross-examination, as will be apparent from the findings recorded by both the learned Courts. Most importantly, the application itself is not admissible in evidence. It will also be pertinent to mention that the mutation entry, which is recorded pursuant to the said application, states that the father was personally present in order to confirm the fact of partition, whereas the father has expired prior to the date on which the mutation entry was recorded.

8. In view of the aforesaid, no substantial question of law arises for consideration in the present second appeal. Therefore, the second appeal is **dismissed**, with no order as to costs.

(ROHIT W. JOSHI, J.)

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