IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 875 OF 2019

Shri.Ramchandra @ Ramdas Kashinath Naik-Teli ...Appellant

Versus

Ashok Shivaji Naik And Others ...Respondents

Mr. Ajay Joshi, for the Appellant.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : OCTOBER 12, 2026.

P. C. :

1. The present Appeal is at the instance of the original Defendant Nos. 1 and 2, challenging the concurrent findings of the Trial Court and Appellate Court decreeing the suit, by which the suit property came to be partitioned between the Plaintiff and Defendant Nos. 1 and 2. For sake of convenience, the parties are referred to by their status before Trial Court.

2. RCS No. 173 of 2001 came to be filed by the original Plaintiff seeking partition and separate possession in respect of property “A” being CTS No. 1686 corresponding to Gram Panchayat property No. 1498 admeasuring 96.02 square meters, and property “B” being sum of Rs. 67,000/-, being the sale proceeds of Gat No. 781.

3. The Plaintiff came with the case that the suit properties were owned by their ancestors Kashinath. Kashinath from his first marriage with Krishnabai had begotten a son Shivaji, and after the death of Krishnabai, Kashinath married Manjulabai, who was also known as Krishnabai, and Defendant Nos. 1 and 2 were born of the said marriage. The said Manjulabai alias Krishnabai expired on 8th October, 1998. The suit properties were ancestral joint family properties, and after the death of Kashinath, continued as joint family property. It was claimed that out of the joint family funds, Gat No. 781 was purchased in the name of Krishnabai, which came to be sold and the agricultural proceeds were deposited in the bank account, out of which the balance is Rs. 67,000/-. As the demand was made for partition and came to be refused, the suit came to be filed.

4. The case of Defendant Nos. 1 and 2 in the written statement was that property A was the self-acquired property of Defendant Nos. 1 and 2, and property B was the sale proceeds out of the sale of the property, which was owned by their mother Manjulabai, and Plaintiffs do not have any right in the suit property. The claim of the property being the ancestral property was denied. It was further claimed that there was partition during the lifetime of Kashinath between the Plaintiff and Defendants, and the Plaintiff had sold off his share and have thereafter, filed the present suit.

5. The Trial Court framed the necessary issues and by judgment dated 16th February, 2010 decreed the suit, holding that the Plaintiff's father, Shivaji and Defendant Nos. 1 and 2 are entitled to 1/3rd share, and in the share of Plaintiff's father-Shivaji, Plaintiff and Defendant Nos. 3 to 5 are entitled to 1/4th share. As against the judgment and decree of Trial Court, Defendant No. 1 preferred an Appeal being RCS No. 76 of 2010, which came to be dismissed by judgment of 15th February, 2018, and hence, present Second Appeal has been filed.

6. Learned counsel for the Appellant has taken this Court through the judgment of the Trial Court and Appellate Court and would submit that there is perversity in finding of the Trial Court. He would submit that the Trial Court erred in law and facts by recording the finding that the Plaintiffs have share in the suit property without considering the case of the Defendants that the Plaintiff had disposed of his share by registered sale deed. He would further submit that it was a specific case of the Defendant that there was oral partition between the Plaintiff and Defendant Nos. 1 and 2, which has not been considered by the Trial Court. He would further submit that it was admitted position that Gat No. 781 stood in the name of Defendant Nos. 1 and 2's mother, i.e. Manjulabai, and therefore, no right could have been claimed by the Plaintiff in respect of sale proceeds for the said suit property B. He would submit that the Plaintiffs have failed to prove that the suit

property was ancestral property and without any such evidence being adduced by the Plaintiff, the burden did not shift upon Defendant Nos. 1 and 2 to prove that the properties were self-acquired property.

7. I have considered the submissions and perused the record.

8. The Trial Court has framed the relevant issue as to whether the suit properties are the ancestral properties.

9. Perusal of the judgment of the Trial Court would indicate that the documentary evidence of revenue records produced by the Plaintiff shows that property "A" came to be recorded in the name of Defendant Nos. 1 and 2 as legal heirs. The Trial Court also considered Exhibit-60, which showed that property A recorded the name of Krishnabai as the legal heir, and after her death, the name of Defendant Nos. 1 and 2 came to be recorded in respect of the said property. Based on the documentary evidence, as the name of Krishnabai/Manjulabai came to be recorded as the legal heir of Kashinath and not in her own right, the Trial Court came to a finding that the suit property was owned by Kashinath. Though, the Defendant Nos. 1 and 2 filed their written statement, they did not step into witness box and did not lead any evidence. The Trial Court noted that the case of the Defendant Nos. 1 and 2 in the written statement was of an oral partition by virtue of which they claimed that the suit properties came to the share of Defendant Nos. 1 and 2, however, did not produce any oral or

documentary evidence to prove oral partition.

10. The Trial Court appreciated the evidence to hold that the suit properties were joint family properties, and there is no evidence led by Defendant Nos. 1 and 2 to establish oral partition. It held that Defendant Nos. 1 and 2 have failed to prove that the suit properties were self-acquired properties.

11. In so far as the suit property B is concerned, as the Defendant Nos. 1 and 2 did not step into witness box, there was no evidence brought on record to demonstrate that Gat No. 781 was purchased by Defendant Nos. 1 and 2's mother out of her own income, and the sale proceeds from the agricultural land would be the separate property of Manjulabai, and consequently, of Defendant Nos. 1 and 2.

12. The revenue records shows that the name of Krishnabai-mother of Defendant Nos. 1 and 2 was entered as legal heir of Kashinath, which establishes that the property “A” was ancestral property in hands of Defendant Nos. 1 and 2. The Plaintiff’s father was step-brother of Defendant Nos. 1 and 2 and entitled to share in Kashinath’s property. The burden was upon the Plaintiffs to show that the suit properties were ancestral property, which has been established from the evidence adduced by the Plaintiff, oral and documentary. Defendant Nos. 1 and 2 having failed to step into the witness box did not discharge the burden of proving that the suit properties were self-acquired properties. The

findings of the Trial Court were upheld by the Appellate Court, and there is no perversity demonstrated in findings of fact.

13. Resultantly, no substantial question of law arises in the present case. The Appeal stands dismissed.

14. Applications, if any, do not survive for consideration and stand disposed of.

[SHARMILA U. DESHMUKH, J.]