



Swapnil

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 513 OF 2013**

Babu Changya Patil (dead) and Ors. ...Appellants

Vs.

Bhagibai Phulaji Mhasker (dead) and Ors. ...Respondents

**WITH
CIVIL APPLICATION NO. 1200 OF 2013
WITH
CIVIL APPLICATION NO. 154 OF 2015
WITH
INTERIM APPLICATION NO. 8137 OF 2024**

Mr. Surel Shah, Senior Advocate a/w. Mr. Anand S. Patil for
the appellants.

Mr. Mandar Limaye for respondent nos. 1 to 6.

CORAM : GAURI GODSE, J.

DATE : 27th APRIL 2026

ORDER :

1. This second appeal is preferred by the original defendant no.1 to challenge the judgment and decree passed by the first appellate court, granting a 1/3rd share to the plaintiff. The suit properties were originally owned by one Budhya Nagya Patil, who had three sons. The plaintiff is the daughter of one of the sons, Sitaram. Defendant nos.1 to 6 are from the branch of another son, Changya and defendant nos. 7 and 8 are from the branch of the third son, Sudam.

Defendant no.13 is the purchaser who claims through defendant nos. 7 to 12. The trial court had dismissed the suit. However, the first appellate court has granted 1/3 share to the plaintiff through her father, Sitaram.

2. Learned counsel for the appellants submits that Sitaram, during his lifetime, had relinquished his share by executing three documents. He submits that all three documents are admitted in evidence. Although the documents are unregistered, they record the actual division and partition between the parties. Hence, the documents were sufficient proof to hold that the properties had already been divided and that Sitaram had relinquished his share. Hence, the plaintiff, claiming through Sitaram, would not be entitled to any share in the suit properties. Learned counsel for the appellants, therefore, submits that the second appeal would require consideration on a substantial question of law as to whether the three documents produced at Exhibits '160' to '163' are sufficient proof that the suit properties were not available for partition.

3. I have perused the papers of the second appeal. There is no dispute on the relationship between the parties, and

that the suit properties are the ancestral joint family properties and Budhya was the original holder. The documents are produced at Exhibits '160' to '163' to contend that there was a partition amongst the parties, and Sitaram had also relinquished his share. The first appellate court has refused to accept the correctness of the contents of those documents, as the contents were not proved by adducing any oral evidence. Defendant nos. 1 to 6, who relied upon the documents to support their contentions that the partition had already taken place and Sitaram had already relinquished his share, failed to step into the witness box to prove the contents of the documents.

4. The first appellate court has relied upon the decisions of this court in ***Gulamuddin vs. Mohammad Bashuruddin***¹, ***Prabhakar Balasa Saoji vs. Subhash Malode and Ors***². In both these decisions, this court has taken a view that even if the documents are accepted in evidence as executed, the contents are to be proved by leading proper and appropriate evidence. This view is taken in reference to the presumption under Section 90 of the Evidence Act, 1872.

¹ 2004 [1] ALL MR 340

² 2005 [2] ALL MR 127

5. In the present case, the documents were accepted as they were thirty years old. However, there is no dispute that no evidence was led to prove the contents of the documents to be true and correct. The first appellate court has therefore, rightly refused to accept the documents as valid proof that there was a valid partition by metes and bounds and that Sitaram had at any time relinquished his share.

6. Learned senior counsel for the appellants also relied upon the admission given by the plaintiff that the parties were in separate possession of the suit properties. The first appellate court has referred to and considered the effect of the admission given by the plaintiff in her cross-examination. The first appellate court also referred to her admissions that she was illiterate and had no knowledge about the contents of the documents. The court has therefore taken the view that even if some part of the land was cultivated by defendant no. 1, the same would not prove that there was a valid partition by metes and bounds in respect of all the suit properties, and would not disentitle the plaintiff to an equal share through Sitaram. Any family arrangement between the parties is therefore not accepted as valid proof of partition

and separate possession, and the prayer for partition and separate possession is correctly granted.

7. In view of the findings of the facts recorded by the first appellate court on a correct examination of the oral as well as documentary evidence on record, as the impugned judgment and decree would not require any interference in this second appeal. The second appeal does not raise any substantial question of law.

8. The second appeal is, therefore, dismissed.

9. In view of the dismissal of the second appeal, pending interim application/civil applications are disposed of as infructuous.

[GAURI GODSE, J.]