

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1232 OF 2004

Smt. Batul Abubakkar Pirjade & ors. ... Appellants

V/s

Shardarkhan Anwarkhan Cittewan & ors. ... Respondents

Mr. A.A. Kumbhakoni with A.P. Kulkarni for the appellants.

Mr. Sunil Padwal Desai for Respondent Nos. 1 to 3.

CORAM: P.V. KAKADE, J.

DATED: 30TH JUNE, 2005

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by the Addl. District Judge, Kolhapur dated 15.7.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Sr.Diovn., Kolhapur, dated 31.7.2002 decreeing the suit for partition and the separate possession of the respective shares in the Mohammedan family.

2. I have heard the learned counsel for both parties.

3. It appears from the record that the only contentious issue was involved to the effect that, whether mother had orally gift the suit property in favour of the present appellants. The evidence on record on behalf of the present appellants has fallen short of proving the said aspect and both the Courts below, therefore, have come to the conclusion that the plea of oral gift is not established and as a result thereof the appellants defendants were not entitled to the relief claimed in the plaint and plaintiffs' suit came to be decreed.

Needless to mention that, all the issues involved in this appeal are the issues of fact and no substantial question of law is involved in this appeal and, therefore, the appeal has no merits and, therefore, stands dismissed with no order as to costs. Consequently, the Civil Application No.1664 of 2004 also stands dismissed with no order as to costs.

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