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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.591 OF 2008
WITH
CIVIL APPLICATION NO.547 OF 2006**

Yeshvant Raiba Dorugade and ors. : Appellants.
versus
Dhaku Rajaba Dorugade and ors. : Respondents.

Mr. B A Powar for the Appellants.
Mr. M R Suryawanshi for Respondent No.1.

**CORAM:- RAJESH G.KETKAR, J
DATED :- FEBRUARY 28, 2011.**

PC.

1 Heard Shri Powar, learned counsel appearing for the Appellants and
Shri Suryawanshi, learned counsel appearing for the Respondent No.1.

2 This Appeal is filed against the judgment and decree dated 22nd
October 2005 passed by the Additional District Judge, Gadhinglaj where by
Regular Civil Appeal No.2/03 preferred by the original Defendant No.1 as also
the Regular Civil Appeal No.8/03 preferred by the original plaintiff were
dismissed. The parties will hereinafter be referred to as their original status in the
trial Court.

3 The Plaintiff instituted a suit for partition and separate possession
in respect of agricultural lands as well as the residential house property. He

contended that he is the youngest real brother of Defendant No.1-Yashwant and Defendant No.2 Antu. Their father was the protected tenant of the agricultural lands and after his death the Defendant No.1 Yashwant was acting as the Manager of the joint family. Proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'Act') were conducted in his name though the joint family was the tenant. In so far as house property is concerned, the Plaintiff contended that all are joint family properties and therefore he prayed for partition and separate possession.

4 The Appellant-Defendant No.1 resisted the suit inter alia contending that Gat No.81 was only owned by Dasappa Khandappa Gajare and, the father of the parties by name Rajaba was the protected tenant of the said land who died in the year 1963. The owner of the lands Mr.Gajare occupied the possession of the said Gat No.81 in the year 1966. Thereafter in the year 1970 the said Gajare allotted the said land to one Ganpati Savekar. He further contended that after the demise of Rajaba in the year 1963, the partition took place in respect of the ancestral properties. Thereafter the Defendant No.1 initiated proceedings against the said Gajare and purchased the said Gat No.81 under the provisions of the Act. He, therefore, contended that the suit was liable to be dismissed.

5 The Courts below have concurrently held that the Plaintiff and Defendant No.2 were serving in Mill at Mumbai and it was the Defendant No.1

who was looking after the agricultural lands of the Plaintiff as well as the Defendant No.2. The learned trial Judge recorded a finding that after the death of Rajaba the tenancy was continued by his heirs viz Plaintiff, Defendant Nos.1 and 2 and they become the joint tenants. More over the proceedings were conducted by the Defendant No.1 Yashwant in the capacity as the Manager of the joint family. He therefore held that the joint family was the tenant. In support of this conclusion he relied upon the judgment in the case of Bapu Bhau vs. Nabhiraj Bhau reported in 1976 Tenancy Law Reporter No.26. In so far as other properties are concerned, he held that in so far as Gat No.82 is concerned, it was purchased in the names of Plaintiff and the Defendant No.1. The Defendant No.2 did not enter into witness box to substantiate or support the case made out by the Defendant No.1. On the basis of the evidence on record both the courts below have disallowed the claim made by the Defendant No.1 that it was his self acquired property or there was previous partition.

6 The courts below have recorded concurrent findings of facts that the Defendant No.1 failed to establish that the agricultural lands were his self acquired properties. The findings recorded by the courts below are based upon he evidence. It can't be said that the judgments of the courts below are either perverse or that they ignored the relevant material.

7 After going through the material on record and after hearing the learned counsel for the parties, I do not find that any substantial question of law is involved in this Appeal. Hence the Second Appeal is dismissed with no order as to costs. In view of the dismissal of the Second Appeal, the Civil Application No.547 of 2006 does not survive and the same is accordingly dismissed.

(RAJESH G.KETKAR, J)