

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

912 SECOND APPEAL NO. 628 OF 2012
WITH CA/10745/2012 IN SA/628/2012

JIJA APPA AMBHORE AND ANR
VERSUS
SURYABHAN VITHOBA AMBHORE AND ANR

...
Advocate for Appellants : Salunke V.D.
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CORAM : T.V. NALAWADE, J.
DATED : 31st March, 2016.

ORDER :

1. The appeal is filed against judgment and decree of Regular Civil Appeal No. 85/2010, which was pending in the Court of Principle District Judge, Aurangabad. This appeal was filed by original defendants against judgment and decree of Regular Civil Suit No. 959/2008, which was pending in the Court of Civil Judge, Junior Division, Aurangabad. Heard the learned counsel for appellants, original defendants.
2. The suit was filed against present appellants by the respondents for relief of partition and separate possession. The land involved is Gat No. 112 to the extent of 37 R. situated at village Mahalpimpri, Tahsil and District Aurangabad. The boundaries of this portion are given in the suit. It is the case of plaintiffs that the suit property was owned by grandfather of

plaintiffs and defendants. After the death of their grandfather, the property was succeeded by the fathers of plaintiffs and defendants namely Vithoba and Appa. The names of Vithoba and Appa were entered in the revenue record as heirs of the grandfather of plaintiffs. It is contended that no partition took place between Vithoba and Appa and also between plaintiffs and defendants. It is contended that the plaintiffs are entitled to 1/2 share in the suit property, but the defendants are not partitioning the suit property and so, there is cause of action to the suit.

3. The defendants admitted that the property was initially owned by grandfather of plaintiffs and defendants. They contended that the names of Vithoba and Appa were entered in the revenue record after the death of grandfather and there was oral partition between Appa and Vithoba. It is contended that after the death of Appa, names of defendants came to be entered in the revenue record as successors of Appa. It is contended that some plots were sold by defendants and so, reopening of the partition may create complications.

4. On the basis of aforesaid pleadings, issues were framed by the Trial Court. There was the issue against

defendants and they were required to prove that there was partition in the year 1975. The Trial Court held on the basis of revenue entry that there was partition, but it held that the property was actually not separated by metes and bounds and so, such partition needs to be effected. The Trial Court declared that the alienation made by the parties, if any, of some portions was to be protected during the partition.

5. The First Appellate Court has held that on the basis of entries of the names of Appa and Vithoba made in the revenue record after the death of their grandfather, it cannot be inferred that there was partition as such entries are made only to show that Vithoba and Appa succeeded to the property of their father. No record at all was produced in the Appellate Court or the Trial Court to show that partition was effected by metes and bounds. The Appellate Court has held that if there was no record of partition, the buyer, if any, from the defendants was bound to suffer as buyer was expected to take care before purchasing the property from the defendants.

6. The learned counsel for appellants, defendants submitted in the present proceeding also that the aforesaid revenue entries are sufficient to infer that there was a partition.

This proposition is not at all acceptable. The record shows that one map was got prepared from Village Talathi to ascertain as to whether there are two such pieces prepared as per the case of defendants. The Court found that the map was not supporting the case of plaintiffs. The defendants wanted to show that the entire frontage of public road was given to them. Thus, it is not possible that in equitable partition, the land adjoining to the State road was given to only one party. Thus, on preponderance of probability also the Courts have held that there was no partition by metes and bound. No substantial question of law as such is made out.

7. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/