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**(2008) 06 BOM CK 0085**

**In the Bombay High Court**

**Case No : Second Appeal No. 387 of 1997**

Chinda Manji Koli (Since deceased) through LRs. (Bhatu Chinda Koli, Navtar Chinda Koli, Smt. Dhrupadabai Chinda Koli and Sou. Shantabai Rajaram Koli)

**APPELLANT**

**Vs**

Manga Daga Koli

**RESPONDENT**

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**Date of Decision : 23-06-2008**

**Acts Referred:**

Bombay Inferior Villages Watans Abolition Act, 1958 — Section 7

**Citation :** (2008) 5 ALLMR 110 : (2008) 5 BomCR 42 : (2008) 110 BOMLR 2053 : (2008) 6 MhLj 632

**Hon'ble Judges :** P.R. Borkar, J

**Bench :** Single Bench

**Advocate :** Mukul Kulkarni, holding for P.M. Shah, for the Appellant; K.U. Talegaonkar, h/f S.B. Talekar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

P.R. Borkar, J.—This is an appeal preferred by the original defendant who was dissatisfied with the judgment and decree passed by the learned Additional District Judge, Nandurbar in Regular Civil Appeal No. 119 of 1990 decided on 30.08.1997 whereby he set aside the order of dismissal of suit passed by the learned Civil Judge, Junior Division, Taloda in Regular Civil Suit No. 21 of 1993 decided on 06.01.1986 and held that plaintiff/respondent is entitled to partition and separate possession of one half share in the suit property.

2. Some of the facts giving rise to this appeal are not disputed at this stage. It is not disputed that one Mohan was the common ancestor of original plaintiff Manga and original defendant Chindha. Mohan had two sons - Ganpat and Manji. Name of son of Ganpat is Daga. Plaintiff Manga is son of Daga, whereas Chindha is son of Manji. Thus, defendant Chindha was second degree uncle of plaintiff Manga.

3. It is case of the plaintiff/respondent that the suit-land bearing Survey No. 20

admeasuring 11 acres and 30 gunthas situated at Taloda, which is now block No. 20 was joint family property of the plaintiff and the defendant. It is stated that the plaintiff and the defendant were members of Hindu joint family. They were cultivating the land. In the year 1963 Inam was abolished and the land was granted in the name of the defendant Chindha. It is case of the plaintiff that even thereafter the land was equally cultivated by the plaintiff and the defendant, however, the name of the defendant was entered into cultivation column of 7/12 extract. In the year 1982 the defendant obstructed the cultivation by the plaintiff, so he filed a suit for partition.

4. The defendant filed written statement at Exh.11 and denied that the suit property was joint family property and the plaintiff was cultivating half portion of the suit land and the defendant was cultivating the remaining half portion. It is stated that the re-grant was only in the name of defendant-Chindha and he is exclusively in possession of the suit-land and the plaintiff/respondent has no concern with the suit-land, so the suit be dismissed. Original defendant - Chindha died pending appeal in the District Court and his legal representatives are appellants in the Second Appeal.

5. The learned Civil Judge, Junior Division, Taloda held that the plaintiff/respondent failed to prove that he has 1/2 share. The learned Additional District Judge, Dhule has reversed the said findings and came to the conclusion that the plaintiff/respondent has proved his case and the plaintiff/respondent is entitled for partition.

6. The Second Appeal is admitted on the following two substantial questions of law as framed by order dated 26.11.1997.

i. Whether the Civil Suit is tenable for holding that the plaintiff/respondent is entitled for partition and re-grant was for the family and not exclusively for defendant-Chindha?

ii. Whether the finding of the Additional District Judge that re-grant is for the family and as such the original plaintiff is entitled for partition and separate possession of 1/2 share is tenable?

7. In order to show that the Watan land is partible, two authorities were relied upon. In the case of Laxmibai Sadashiv Date and Others Vs. Ganesh Shankar Date and Others, , the Full Bench held that where service inam was granted to the joint family in the name of the senior member and the same was abolished, it could not be contended that the right of the other members of the family relating to partition of joint family property was extinguished nor could be contended that when the regrant was made u/s 7, the other members had no right to ask for a share therein by way of partition.

8. The abovesaid view taken by the Full Bench is confirmed by the Supreme Court in the case of Kalgonda Babgonda Patil v. Balgonda Kalgonda Patil and Ors. AIR 1989 S.C. 1042 is as follows:

13. It was also contended by learned Counsel that there was also a partition in the family in 1874 and the properties which could be partitioned were partitioned between the two branches of the family and thereafter according to the learned Counsel the families had separated and in view of that it could not be said that there was any joint family subsisting. However learned Counsel admitted that although when other properties which could be partitioned were partitioned in 1874 and also some properties in 1904 but still the Watan (Inam) lands which were held by the senior member of the family according to the custom and which were heritable continued generation after generation until by the present Act i.e. Bombay inferior Village Watans Abolition Act, 1958 (Bom Act 1 of 1959) these were abolished. It therefore could not be doubted that these watan lands continued to be the hereditary property of the family although according to the custom the Watan was only in the name of the senior member of the family and the succession according to the custom was in accordance with rule of primogeniture. This is not disputed that for the first time under this Act these Watans were abolished and the lands were converted into Rayatwari lands and therefore they became partible.

9. In this case it is argued before this Court that the finding that Chindha was senior member of the family, and therefore re-grant in his name was for the entire family was not correct because plaintiff - Manga in his statement at Exh.41 has stated that his father Daga Ganpat was elder brother of Chindha. It may be noted that we have to read the case as a whole and we cannot take some sentence isolated, because in a joint family at different point of time different persons may be the eldest male members of the family and they may be working as Kartas. Plaintiff - Manga has stated that the suit property was given as Koli Inam originally to Ganpat and Manji. They were real brothers. Ganpat had a son Daga. His son is defendant - Chindha. Daga has two sons - plaintiff and Gorakh. It is mentioned in the two cases referred to above that the name of senior member of the family is always entered to watan property as the custom prevailed that watan land was not partible, but it is enjoyed by all members of the family though it remained to be in the name of senior member of the family.

10. The learned Additional District Judge has noted certain points to decree the suit. Thus, he has observed in para 9 and 10 that 7/12 extracts produced on record initially show alternate cultivation by Daga and Chindha. Sometimes they were shown to have cultivated even jointly. He further observed that it was no more disputed that Mohan was common ancestor and no other family of Gaonkamgar Koli existed in the village. The plaintiff also stated that he was in actual possession of the suit-land and produced evidence to show that Adivasi Vividh Karyakari Sewa Society, Talve had provided loan to him. In support of it, he has produced Exh.50 and 51. There were receipts of payment of land revenue which are produced at Exh.37 to 40. The learned Additional District Judge further stated that taking into consideration the admitted fact that the suit filed was Gaon Kamgar Koli Vatan and it was in joint cultivation for years, the only conclusion that can be drawn is that the suit-land was joint family property of the

plaintiff's father Daga and the defendant. The re-grant in the name of defendant will not give him absolute ownership. Considering that this is necessarily a finding of fact, it cannot be said that said finding is perverse or is not based on any evidence. This is not a case where admissible evidence is not considered or any inadmissible evidence is considered. So, in the Second Appeal no interference can be made regarding this finding of fact that the suit property is a joint family property. The Second Appeal is, therefore, dismissed. The parties to bear their own costs.

11. At this stage the learned advocate for the appellant states that the interim relief may be continued for a period of six weeks so that they may approach higher court. The interim relief to continue for a period of six weeks only.