

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Second Appeal No.233 of 2014
With
Civil Application No. 3446 of 2014**

Shivananda w/o Shivaji Sagare
And Another.

.. Appellants.

Versus

Anusayabai W/o Janardhan Pandhare
And Others.

.. Respondents.

Shri. C.R. Deshpande, Advocate, for appellants.

Shri. A.A. Shelke, Advocate holding for Shri. P.D.
Suryawanshi, Advocate, for respondent Nos.2,3-a, 3-c and
3-d.

CORAM: T.V. NALAWADE, J.

DATE : 21st OCTOBER 2015

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.268 of 2000 which was pending in the Court of the Civil Judge, Junior Division, Latur and also against the judgment and order of Regular Civil Appeal No.125 of 2010 which was

pending in the Court of the Ad-hoc District Judge-1 Latur.
Both sides are heard.

2) The suit was filed by respondent No.1 Anusayabai for relief of partition and separate possession of her share from three agricultural lands like Gat No.373 (72 gunthas), Gat No.378 (22 Gunthas) and Gat No.388 (93 Gunthas). The lands are situated at Saranwadi, Chakur. It is the case of the plaintiff that she is real sister of defendant No.1 and the properties are left behind by their father. The suit was also filed in respect of Plot No.16 of 50×50 feet which is part of Survey No.52 situated at Arvi. It is the case of the plaintiff that this property was purchased in the name of wife of defendant No.1 but the property belongs to joint Hindu family as it was purchased from the income of the joint family estate. It is contended that to defeat the claim of the plaintiff, defendant No.1 has sold this plot to defendant Nos.2 and 3 and that sale is not binding on the plaintiff. 1/4th share was claimed by the plaintiff.

3) The defendants filed written statements and contested the matter. They admitted the relationship but they contended that the plaintiff was never member of the joint Hindu family. Defendant No.1 being Karta of joint family constituted by other members, the plaintiff is not entitled to any share. It is contended that property which is purchased in the name of the wife of defendant No.1, is the self acquired property of defendant No.4, wife.

4) Both the sides gave evidence. The trial Court held that the aforesaid three agricultural lands were left behind by the father of the plaintiff and so she is entitled to have her share but the trial Court has refused the relief in respect of aforesaid plot by holding that the plaintiff has failed to prove that it is also the joint Hindu family property. The trial Court took into consideration mutation entry showing that the property was standing in the name of father of the plaintiff and the name of defendant No.1 was entered as Karta of the Joint Hindu family. The trial Court held that notional partition needs to be effected and provision of section 6 of the Hindu Succession Act cannot

be given retrospective effect. Share is given to the plaintiff in the share carved out for father of the plaintiff and so 1/4th share was given to her by the trial Court. This decision was not challenged by the plaintiff and it was challenged by the purchasers of land Block Nos.373, 378 and the purchaser of third land but the First Appellate Court dismissed the appeal.

5) The present appeal is filed by contending that it is not possible to carve out 1/4th share for the plaintiff as giving 1/4th share in the three lands will create fragmentation which is not possible under the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act. Learned counsel for the appellant took this Court through various provisions like Sections 8, 8AA, 9 etc. of that Act. The learned counsel submitted that decree cannot be executed and on that point substantial question of law can be formulated and the appeal can be admitted.

6) This Court has carefully gone through the aforesaid provisions of the special enactment. They show

that fragment cannot be created but they also show that procedure which is given in section 8AA can be followed by the revenue authority. If the procedure is followed properly, creation of fragment can be avoided. It is the job of the court to declare only the share, entitlement of the plaintiff. In such case decree is sent for execution to the revenue authority as provided in Section 54 of the Civil Procedure Code. The authority under the aforesaid Act will necessarily follow the procedure and so it cannot be said that such decree is bad in law in view of the aforesaid provisions of the Act. This Court holds that there is no material at all for formulation of substantial questions of law.

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

Sd/-
(T.V. NALAWADE, J.)

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