

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.289 OF 2015
WITH
CIVIL APPLICATION NO.7545 OF 2015

1. Suryabhan s/o Babasaheb Chavan,
Age : 62 years, Occu. Agriculture,
2. Parbati s/o Babasaheb Chavan,
Age : 58 years, Occu.Agriculture,

Both R/o Jalgaon, Tq. Ashti,
District : Beed

..APPELANTS
(Orig. Deft. No.2 & 3)

VERSUS

1. Tarabai @ Sunita w/o Prakash Kadke,
Age : 40 years, Occu. Agriculture,
R/o Chinchondi Patil,
Tq. and Dist. Ahmednagar ..(Orig. Plff. No.1)
2. Latabai w/o Pandurang Chavan,
Age : 53 years, Occu.Agriculture,
R/o Jalgaon, Tq. Ashti,
District : Beed ..(Orig. Plff. No.2)
3. Shobhabai w/o Babasaheb Moharkar,
Age : 40 years, Occu. Agriculture,
R/o Kada, Tq. Ashti,
District Beed ..(Orig. Deft. No.1-A)
4. Haribai w/o Yadav Sitole,
Age : 90 years, occu. Nil,
R/o Takli Amiya, Tq. Ashti,
District Beed ..RESPONDENTS
(Orig. Deft. No.4)

Mr D.R. Jayabhar, Advocate for appellants

CORAM : N.W. SAMBRE, J.

DATE : 15th July, 2015

ORAL ORDER :

The present appeal is by original defendants no.2 and 3 to Regular Civil Suit No.154 of 2001, which was instituted on 23rd April, 2001, seeking relief of partition and separate possession. The said suit was dismissed on 9th January, 2007.

2. The subsequent purchasers of the suit property were also impleaded as party - defendants to the suit.

3. The claim of the respondents before the Trial Court was that one Girjappa was having two sons, namely, Maruti and Babasaheb. Maruti and Girjappa expired. Babasaheb, i.e. defendant no.1- present appellant, who has three sons Suryabhan, defendant no.2 Parbati and defendant no.3 Pandurang (who expired), were holding the property. According to the plaintiffs, plaintiff no.2 is widow of plaintiff and plaintiff no.1 is daughter of late Pandurang. As such, partition of the suit property owned by Girjappa was sought. It is further claimed that that before 1992 there was a partition between Maruti and Babasaheb and the share of Babasaheb has come to the share of defendants no.2, 3 and 4. Out of half share came to Maruti, he has sold 80 R land to defendant no.1/a Shobhaai. Plaintiff no.2 had filed maintenance proceedings against Pandurang and

Pandurang has sold entire property, except 02 R land to Satyabhama Jadhav. It is claimed that Regular Civil Suit No.422 of 2001, which was in relation to 3.20 Hectares of land, which had come to the share of Maruti, was compromised on the same day of its filing, without impleading respondents/plaintiffs as parties.

4. The claim for partition and separate possession was resisted by appellants/defendants no.2 and 3 by filing their written statement at Exh.87 and it was alleged that the plaintiffs were not entitled for partition and separate possession, on the ground that the compromise decree passed in Regular Civil Suit No.422 of 2001 is binding on them. Apart from above, it is claimed that the property that stood in the name of plaintiff no.2 was purchased by defendants out of the income derived from the joint family property.

5. The learned Trial Court framed the issues as regards the nature of the property, i.e. whether the suit property is a Hindu undivided family property and answered the same against the plaintiffs and dismissed the suit.

6. Regular Civil Appeal No.136 of 2009, preferred by plaintiff no.2 Latabai, came to be allowed by judgment and decree dated 31st December 2014, whereby the lower appellate court, upon re-appreciation

of the pleadings and evidence, has ordered that the plaintiffs have share in the suit property and further held that the decree in Regular Civil Suit No.422 of 2001 was a collusive decree and not binding on the plaintiffs. It was further held that the plaintiffs are entitled for 1/4th share in the suit property. As such, present Second Appeal.

7. Mr Jayabhar, learned Counsel appearing on behalf of the appellants, would urge that the lower appellate court, while reversing the decree of dismissal of the suit, has failed to appreciate two aspects of the matter, namely, (i) that the property which stood in the name of plaintiff no.2 was purchased out of the income derived from the joint family property and (ii) that the decree passed in Regular Civil Suit No.422 of 2001 is binding on the plaintiffs.

8. With a view to consider the above referred contentions, learned Counsel appearing on behalf of the appellants, has taken me through the observations made by the lower appellate court.

9. I have perused in detail the observations made by the lower appellate court and it is noticed that it has considered the claim of the plaintiffs afresh, particularly when the suit for partition and separate possession was dismissed. While dealing with the claim for partition and separate possession, the lower appellate court has given a finding, that

the plaintiffs being legal heirs of deceased Pandurang, who as a common ancestor as that of the defendants, was entitled for share in the suit property and gave declaration that the decree passed in Regular Civil Suit No.422 of 2001 is not binding on the plaintiffs.

10. While doing so, the lower appellate court has taken a note of the fact that the respondents/plaintiffs were not party to the earlier suit, bearing Regular Civil Suit No.422 of 2001. Apart from above, the partition that was effected earlier in 1992 was also behind the back of respondents/plaintiffs, when the Court reversed the decree passed by the Trial Court. The lower appellate court has proceeded to observe that in view of the admission given by the defendants *qua* relationship and the fact that the husband of plaintiff no.1 and father of plaintiff no.2 was the uncle of defendants no.1 to 3, has rightly proceeded to decree the suit.

11. Apart from above, it is required to be noted that though the appellants/defendants have taken a stand that the part of the suit property was purchased out of earning of the joint family property and though sufficient opportunity was given, the said fact was not established by the appellants/defendants.

12. In my view, the approach of the lower appellate court appears to be just and proper and in tune with Order XLI Rule 31 of the Code of Civil

Procedure.

13. No substantial question of law is involved in the appeal. The Second Appeal, therefore, fails and stands dismissed with no order as to costs.

14. In the light of dismissal of the Second Appeal, Civil Application No.7545 of 2015 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

amj