

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

SECOND APPEAL NO. 425 OF 2012

Smt. Chimabai Rambhau Pacharne

Age : 65 Yrs., Occ. Agriculture,

R/o : Aadgaon, Tq. : Pathardi,

Dist.: Ahmednagar.

.... APPELLANT/

[ORI. DEFT. NO. 1]

V E R S U S

1. Kum. Komal D/o Sanjay Pacharne

Age : 10 Yrs., Occ. Education,

Minor through guardian

Rajendra Bajirao Kamble

Age : 32 Yrs., Occ. : Agriculture,

R/o : Aadgaon, Tq. : Pathardi,

Dist.: Ahmednagar.

2. Bhausahab s/o Rambhau Pacharne

Age : 32 Yrs., Occ. : Agriculture,

R/o : Aadgaon, Tq. : Pathardi,

Dist.: Ahmednagar.

3. Alka Bhausahab Pacharne

Age : 27 Yrs., Occ. : Agriculture,

R/o : Aadgaon, Tq. : Pathardi,

Dist.: Ahmednagar.

4. Mitabai w/o Santaram Edke

Age : 48 Yrs., Occ. : Agril.,

R/o : Wamanbhau Nagar,

Pathardi, Tq. : Pathardi,

Dist.: Ahmednagar.

5. Hirabai w/o Dashrath Salve

Age : 47 Yrs., Occ. : Agril., **RESPONDENTS/**

R/o : Khadgaon (Lonar), **[R.No. 1 – ORI. PLAINTIFF,**

Tq. : Pathardi, Dist.: **R.Nos. 2 TO 5 – ORI.**

Ahmednagar. **DEFENDANTS]**

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Mr. D.A.Bide, Advocate for Appellant.

Mr. P.R.Nangare, Advocate for R – 1 to 3.

Mr. P.P.Kalaskar, Advocate for R – 4 & 5.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 13th OCTOBER, 2015

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JUDGMENT :

1. Appeal is admitted. Notice for admission made returnable forthwith. Heard learned counsels for both sides for final disposal of the present Second Appeal.

2. Present Second Appeal is filed against the

Judgment and decree dated 14/01/2004 in R.C.S. No. 125/2002 which was pending in the court of Civil Judge [Jr.Division], Pathardi, district Ahmednagar and also against the Judgment and Order dated 11/04/2012 in R.C.A. No. 66/2004 which was pending in the court of the Principal District Judge, Ahmadnagar. The Suit filed by present respondent No. 1 Komal for relief of partition and separate possession is decided in her favour.

3. The Suit was filed by Komal through her next friend, her maternal uncle Rajendra Kamble. It is her case that the suit properties are ancestral properties of plaintiff and defendants. Said properties were standing in the name of Rambhau. Defendant No. 1 is the widow of Rambhau. It is contended that defendant No. 1 had 2 sons and 2 daughters from Rambhau. It is contended that Sanjay was the son of defendant No. 1 from Rambhau and he was the father of plaintiff. It is contended that Meerabai and Heerabai are daughters of Rambhau and Bhausahab [defendant No. 2] is a son of Rambhau. Defendant No. 3 is the wife of defendant No. 2 and defendants No. 4 and 5 are daughters of defendant No. 1.

4. It is the case of the plaintiff that during his life time, Rambhau had purchased suit properties in the name of defendant No. 1. It is contended that in one incident, both mother and father of plaintiff died on 27/10/1995 and since then her maternal uncle is taking care of her. It is contended that to deprive the plaintiff of her share in the suit properties, defendants are taking steps to dispose of the suit properties. It is contended that her maternal uncle had asked the defendants to effect partition, but they have refused to do so. It is contended that land G.No. 140/1-A is now shown to be sold in favour of defendant No. 3 by defendant No. 1. It is contended that it is a sham and bogus sale deed and it is not binding on the share of the plaintiff.

5. Defendants No. 1 to 3 filed Written Statement and contested the Suit. Defendants No. 4 and 5 adopted the Written Statement of defendants No. 1 to 3. Defendants admitted the relationship of plaintiff with them. They denied that the suit properties were purchased by Rambhau in the name of defendant No. 1. They contended that defendant No. 1 purchased the properties from her own income and as the properties are self-acquired properties of defendant No. 1,

plaintiff has no right to claim share in the suit properties.

6. Issues were framed on the basis of aforesaid pleadings. Both sides adduced evidence. Both courts below have held that the properties were purchased in the name of defendant No. 1 by Rambahu and so the plaintiff has right to claim partition and separate possession. The trial court held that plaintiff has 3/10th share in the suit properties. The trial court has held that notional partition needs to be effected first amongst Rambhau, his wife and his 2 sons and then the share of father needs to be divided amongst 5 successors of father viz. his wife and 4 issues.

7. First appellate court has observed in the Judgment at one place, in para No. 11, that as the properties were purchased by Rambhau, his widow and 4 issues are entitled to have equal share i.e. 1/5th share in the properties, but the Appeal is dismissed without modifying the Judgment and decree of the trial court.

8. The evidence shows that Rambhau was in service. On the other hand, defendant No. 1 had no

independent source of income. In view of these circumstances, courts below have held that the properties were purchased by Rambhau in the name of defendant No. 1 and the properties became joint Hindu family properties after the death of Rambhau. Rambhau was getting good salary of ₹ 900/- [Rupees Nine Hundred] per month when the properties were purchased. As defendant No. 1 could not show independent source of income, there was no alternative before the courts below than to give such finding. The finding on this point is concurrent and there is no material on the basis of which substantial question of law can be formulated on this point.

9. Learned counsel for the appellant submitted that if the properties were belonging to Rambhau, then the provisions of Sections 8 and 9 of the Hindu Succession Act become applicable and each successor from Class-I is entitled to get equal share. He submitted that the matter needs to be decided by formulating substantial question of law on this contention. So, this Court has considered following points as substantial questions of law :

[i] Whether in view of the provisions of Sections 8 and 9 of the Hindu Succession Act and the fact that Rambhau, the predecessor in title of the parties, was absolute owner of the properties, each heir from Class-I is entitled to get $1/5^{\text{th}}$ share in the suit properties ?

[ii] Whether the courts below have committed error in determining shares of the parties ?

10. In view of the discussion already made, this Court holds that each heir of Rambhau is entitled to have $1/5^{\text{th}}$ share in the suit properties. The so called document executed in favour of defendant No. 3, wife of defendant No. 2, can not be recognized in law as against the plaintiff and the sale deed will not be binding on the share of the plaintiff.

11. In the result, the Judgment and decree of the courts below needs to be modified and for that Appeal needs to be partly allowed.

12. In the result, present Second Appeal is partly allowed.

The Judgments and decree of the courts below

are hereby modified in following terms.

The Suit is decreed with costs.

It is hereby declared that the plaintiff, defendants No. 1 and 2 and defendants No. 4 and 5 have equal share in the suit properties described in para No. 1-A and 1-B of the plaint i.e. 1/5th share each.

Partition of the properties is to be effected as per the provisions of Section 54 of the Code of Civil Procedure.

It is hereby declared that the sale deed dated 30/05/2002 executed by defendant No. 1 in favour of defendant No. 3 is not binding on the share of the plaintiff.

Decree is to be prepared accordingly.

13. In view of disposal of present Second Appeal, Civil Application No. 7356 of 2012 also stands disposed of.

[T.V.NALAWADE, J.]