

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 591 OF 1992

Rajaram Hari Bhosale
since deceased, through heirs and
legal representatives

1(a) Ganpatrao Rajaram Bhosale
(since deceased) through legal heirs
1(Ai) Anand Ganpat Bhosale
Age : 38 years
1(Aii) Umesh Ganpat Bhosale
Age : 35 years
1(Aiii) Vikrant Ganpat Bhosale
Age : 32 years

1(b) Sampatrao Rajaram Bhosale,

1(c) Ramesh Rajaram Bhosale

1(d) Prakash Rajaram Bhosale,
all adults, residents of Koregaon,
Behind Modern High School,
Taluka-Koregaon, Dist : Satara

1(e) Smt. Sharda Raghunath Jagdale,
at and post : Budh, Taluka- Khatav
Dist : Satara

1(f) Smt. Ranjana Bhagwanrao Khandagale,
residing at Siddhnathwadi, Gyanba
apartment, R. No.8, Taluka-Wai,
Dist : Satara

.....Appellants

V/s.

1). Shantabai w/o. Krishna Barge
(Deleted as per order dated

8th October, 1990)

2). Smt. Sajabai w/o. Baburao Barge
Age : 70 yrs, Occ. Household,
Resident of Koregaon, District - Satara
(Deleted as per order dated 8th
October, 1990)

3). Sou. Lilabai w/o. Vilasrao Pisal,
Aged : 55 years, Occupation : Household
duties, Resident of Bhavadhan,
Taluka-Wai, District – Satara

4). Sou. Kalabai w/o. Laxman Bobade,
Aged : 50 years, Occupation : Household
duties, Resident of Bibi (Kapashi)
Taluka- Phaltan, District : Satara

5). Sou. Sushila Bhaskarrao Pawar,
Aged : 47 years, Occupation : Household
duties, Resident of Chitali,
Taluka – Khatav, District – Satara

6). Shri. Vithal Abaji Barge,
since deceased through his heirs
and legal representatives :

6a. Shri. Vishwas Vithal Barge

6b. Shri. Anandrao Vithal Barge,
aged : 40 years, Nos. 6a and 6b
both residing at and post
Taluka-Koregaon, District- Satara.

6c. Sau. Kusum Ramchandra Veer,
aged : 60 years, Resident of Rui,
Taluka- Koregaon, District- Satara

6d. Sau. Ratnabai Hemant Pol,
Aged : 55 years, Resident of Room no.8,
Building no.99, Radha Damodhar Niwas,
Kurla (West), Mumbai-400 070.

....Respondents

* * * * *

Mr. M.L. Patil, Advocate for the appellants.

None for the respondents.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

24th MARCH, 2015.

JUDGMENT :-

1). This Second Appeal was admitted for consideration of the following question as the substantial question of law :

“Whether the Courts below have correctly held that the settlement deed dated 4th May, 1943 was executed by the plaintiff in favour of defendant no.1 in lieu of her pre-existing right of maintenance”?

2). The appellant is the original plaintiff. Respondents no.1 to 6 are the original defendants, out of which, respondents no.1 and 6 were the contesting defendants. During the pendency of the proceedings, the appellant, respondent no.1 and respondent no.6 expired and their respective heirs have been brought on record. The parties will hereinafter be referred to, by their original nomenclature.

3). The brief statement of facts required to be noted for the purpose of deciding the above question are as follows :-

. One Neelu Barge had one-half, undivided share in the ancestral properties at R.S. No.394 and R.S. No. 401/1. The properties have been renumbered as R.S. No.394/1, R.S. No.394/3, R.S. No.400/1-B and R.S. No.400/5-A. Neelu had two sons and a daughter by names, Krishna, Ramu and Manjulabai. The sons of Neelu predeceased him. Ramu was a Bachelor and Krishna was married to defendant no.1. The plaintiff is the son of Manjulabai. Krishna died in the year 1913. Neelu died sometime in the year 1945-46. On 25th January, 1993 Neelu by a registered deed gifted all his properties including share in the suit lands to the plaintiff. A couple of months thereafter i.e. on 4th May, 1993 the plaintiff executed, in favour of defendant no.1, a document of settlement stating that the suit lands were given to her for lifetime and upon her death, the same would revert back to the plaintiff. On 6th September, 1980 defendant no.1 executed gift-deed of the suit lands in favour of defendant no.6. Therefore, the plaintiff filed suit for possession of the suit properties contending that defendant no.1 had lost right to maintain herself on the income from the suit properties on execution of the gift-deed in favour of defendant no.6. He also alleged that since defendant no.1 had a limited right to the suit properties, a gift thereof to defendant no.6 was of no consequence. The trial Court dismissed the suit holding that defendant no.1 had her right in the suit properties as widow of pre-deceased son of Neelu and the gift-deed executed by her in favour of defendant no.6 is valid and legal. The Appellate Court confirmed

the decree of the trial Court by holding that the plaintiff had failed to prove that defendant no.1 had only a life interest in the suit properties by virtue of settlement deed dated 4th May, 1943 and that she did not become absolute owner thereof.

4). The contention of the appellant before the Courts below as also before this Court is that, by virtue of the gift-deed dated 25th January, 1943, the plaintiff became the absolute owner of the suit properties. The settlement deed executed by him in favour of defendant no.1 gave her only restricted right of maintenance over the suit land. Since restricted right over the suit properties had been created by the deed of settlement executed by the plaintiff in favour of defendant no.1, on commencement of Hindu Succession Act, 1956 Section 14(2) became applicable and defendant no.1 did not become full owner of the suit properties. According to the plaintiff, the Courts below erred in holding that Section 14(1) of the Hindu Succession Act, was attracted to the facts of the case.

5). It would be convenient to note at this stage, the relevant provision of Section 14 of the Hindu Succession Act. The same is reproduced below :-

“14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.— In this sub-section, “property” includes both movable

and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

6). Bare reading of Section 14 of the Hindu Succession Act is sufficient to know that, sub-section (1) thereof is attracted to the pre-existing limited rights of a woman, whereas, sub-section (2) is attracted to a restricted right created under a gift or a decree of Court or Will or Award. If defendant no.1 can be said to have a pre-existing right of maintenance over the suit properties, sub-section (1) becomes applicable and her limited right over the suit properties would be converted into full rights.

1). It is obvious from the undisputed fact of the case that, defendant no.1 had a pre-existing right of maintenance over the suit properties. This right is recognised and spelled out specifically in the deed of gift in favour of the plaintiff. Besides, it is significant that within a couple of months thereafter, the document of settlement came to be executed. Therefore, there is no infirmity in the view taken by the Courts below that the execution of the deed of settlement was in lieu of her pre-existing right of maintenance. The restricted right was not created for the

first time by the deed of settlement. In that case, on commencement of the Hindu Succession Act, by virtue of Section 14(1) thereof, defendant no.1 became the absolute owner of the suit properties. The question framed is answered in the affirmative. The appeal is dismissed.

(SMT. R.P. SONDURBALDOTA, J)