

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 684 OF 2013
WITH
CIVIL APPLICATION NO. 1612 OF 2013
IN
SECOND APPEAL NO. 684 OF 2013

- 1 Sou. Ratan Dattatraya Ghule @
Ratan Balusrao Takle
Age 41 years, Occ : Household
- 2 Sou.Kamal Laxmanrao Sadare@
Kum.Kamal Balusrao Takle
Age 44 years, Occ: Household
- 3 Vatsalabai Balusrao Takle
Age 71 years, Occ: Household
All R/at Manjri, Tal.Haveli, Dist.
Pune

....Appellants

Vs

- 1 Shri Babasaheb Balusrao Takle
Age about 59 years, Occ:
Agriculturist
- 2 Shri Sunil Babasaheb Takle
Age about 32 years, Occ:
Agriculturist
- 3 Shri Vijay Babasaheb Takle
Age about 59 years, Occ:Agriculturist

- 4 Shri Chandrakant Hagwane
Age about 66 years, Occ:Agriculturist
- 5 Shri Sachin Chandrakant Hagwane
Age about 41 years, Occ:Agriculturist
- 6 Shri Shailesh Chandrakant Hagwane
Age about 39 years,Occ :
Agriculturist
- 7 Shri Sudhir Chandrakant Hagwane
Age about 36 years,Occ: Agriculturist
Respondent No.4 to 7 R/at Bhukam
Tal. Haveli, Dist. PuneRespondents

Mr S.V. Sadavarte for the appellants.

Mr R. S. Apte with Mr S.C.Wakankar for respondent nos.1 to 3

CORAM : R. K. DESHPANDE, J.
DATE : 3rd AUGUST, 2015.

P.C.

1. The trial Court dismissed the Regular Civil Suit No.1907 of 2005 for partition and separate possession on 29/09/2011. The Civil Appeal No.703 of 2011 is dismissed by the lower appellate Court on 8/4/2013. Hence this second appeal by the original plaintiff.
2. Shri S.V.Sadavarte, learned Counsel appearing for the appellant has relied upon the decision of the Apex Court in the case of

*“Revanasiddappa and Anr v. Mallikarjun and Ors.”*¹ and has urged that the question as to whether the children born out of void marriage have no right to the property held by the father, is referred to a larger bench. He submits that the Courts below have committed an error of law in holding that plaintiffs have failed to establish that they are the legitimate children of Balusrao and therefore the substantial question of law pending in the reference before the Apex Court also arises in this case.

3. As per the provision of Section 16 of the Hindu Marriage Act, 1955 what is required to be established is the factum of marriage and paternity of the children. The lower appellate Court has in categorical terms held in Para 9 that unless the marriage in fact is pleaded and proved the question of drawing inference about the legitimacy or illegitimacy of a child begotten out of such relationship does not survive. In fact, in the facts of this case when the marriage in between Balusrao (deceased) and Vatsalabai is not established the plaintiff Nos.1 and 2 cannot get the status of even the illegitimate children of Balusrao.

4. The mother of the plaintiff Vatsalabai has not entered the witness box and paternity of plaintiffs has not been established. In view of

¹ 2011 AIR SCW 2447

this, the question referred to by the Apex Court for the decision of the larger bench does not at all arise in this case. No substantial question of law arises.

5. Second appeal is dismissed.

(R. K. DESHPANDE, J.)