

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 115 OF 2015

(Savleram Rama Panmand
and others
versus

Appellants

Gangubai Savleram Panmand
and others

Respondents)

Mr. Abhijit B. Kadam, Advocate for appellants.
Mr. R.S.Apte, Senior Advocate, assisted by Mr.
Vaibhav P. Patankar, Advocate, for Respondent No.1

CORAM : R.K.Deshpande, J.
DATED : 8th JULY, 2015.

P.C.

Regular Civil Suit No. 109 of 1989 filed for partition and separate possession by the respondent-plaintiff was decreed by the trial Court on 24.03.2008, holding that the Respondent No.1 has half share in the suit property at Sr. No. 1A and 1B, which includes dwelling house. Regular Civil Appeal NO. 92 of 2014 preferred by the defendants was dismissed by the lower appellate Court on 08.08.2014. Hence, the original defendant Nos. 1 to 4 are before this Court in this second appeal.

Before the Courts below, the questions

involved were two fold i.e. (I) Whether the plaintiff, who is the widow of Savleram who died in the year 1952, had share in the ancestral property and (II) whether the plaintiff was entitled to claim partition and separate possession in respect of such claim?

Undisputedly, Kondaji who was the common ancestor holding ancestral property, died in the year 1942, leaving behind him Ram and Savleram, the two sons and five daughters. Savleram died in the year 1952. The defendants are the heirs of Rama, who have defended the claim of the plaintiffs.

Both the Courts below have relied upon sub-section (2) and (3) of Section 3 of the Hindu Women Right to Property Act, 1937, to hold that when a Hindu governed by any school of Hindu law other than the *Dayabhag* school or by customary law dies intestate having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had. The Courts below have held that the suit property was not partitioned and it was a joint family property. The coparcener Savleram died in the year 1952, as a result of which the plaintiff being his widow was entitled to have the same interest in the property as Savleram had at the time

of his death. Relying upon the provision of sub-section (3) of Section 3 of the said Act, the Courts have held that it gives the widow of Savleram the same right of claiming the partition as Savleram being the owner.

The learned counsel for the appellant has relied upon the provision of sub-section (3) of Section 3 of the said Act to urge that the plaintiff had limited interest as Hindu women estate in the property.

The contention cannot be accepted for the reason that upon coming into force of Hindu Succession Act, 1950, such interest gets transformed into absolute ownership by virtue of sub-section (1) of Section 14 of the said Act. No substantial question of law arises out of the same.

The learned counsel for the appellant has urged that the plaintiff has not entered the witness box, but her power of attorney has deposed and such evidence is not admissible.

The argument has no bearing on the controversy involved in the case for the reason that it is the question of entitlement in law of the plaintiff to a share in the joint family property and to file a suit claiming partition and separate possession. So

far as the contention regarding share in the dwelling house is concerned, it is based on Section 23 of the Hindu Succession Act, which was repealed by an amendment brought into force on 09.09.2005. The decision of the Apex Court in the case of G. Sekar vrs. Geetha and others, reported in AIR 2009 SC 2649 follows. No substantial question of law arises for consideration, the second appeal is dismissed.

At this stage, the learned counsel for the appellant seeks stay of the order passed by this Court.

Shri Apte, the learned Senior Counsel appearing for the respondent submits that the decree shall not be executed for a period of eight seeks.

Hence, in view of the statement made before the Court, there is no question of granting stay to the order passed by this Court. The prayer is rejected.

(R.K.DESHPANDE, J.)