

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.309 of 2012

(Smt. Kausalyabai Sahebrao Ingle

vs.

Sheshrao Vinayakrao Bhandwalkar and others)

=====

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

=====

Court's or Judge's Orders

*Shri N.D. Khamborkar, Advocate for the Appellant.
Shri S.V. Sohoni, Advocate for Respondent No.1.
Shri D.M. Gupta, Advocate for Respondent Nos.6 and 7.*

CORAM : Z.A. HAQ, J.

DATE : DECEMBER 17, 2015.

Heard Shri N.D. Khamborkar, learned Advocate for the appellant, Shri S.V. Sohoni, learned Advocate for respondent No.1 and Shri D.M. Gupta, learned Advocate for respondent Nos.6 and 7.

The appellant-plaintiff has challenged the judgment and decree passed by the subordinate Courts concurrently dismissing her claim for partition and separate possession of the suit property. The appellant-plaintiff claims that the suit property belongs to Shri Vyankatrao, the father of the appellant and the respondents, that Shri Vyankatrao died after 1956 and, therefore, in view of Section 6 of the Hindu Succession Act, 1956, the appellant is entitled for her share in the suit property.

The subordinate Courts have concurrently recorded that the appellant has failed to prove that Shri Vyankatrao died

after 1956. The subordinate Courts have recorded that Shri Vyankatrao died in 1946. The concurrent findings of fact are based on the evidence on record.

Shri Khamborkar, learned Advocate for the appellant has submitted that the appellant had pleaded in the plaint that Shri Vyankatrao died about 26 years prior to the filing of the suit in 2000, which means that, according to the appellant, Shri Vyankatrao died around 1974. It is submitted that respondent No.1-defendant No.1 admitted in his written statement that Shri Vyankatrao died about 26 years ago. The submission is that in view of the admission given by respondent No.1 in the written statement and in view of the provisions of Order VIII Rule 2 of the Code of Civil Procedure, the subordinate Courts should have held that the appellant has succeeded in establishing that Shri Vyankatrao died after 1956. The submission made on behalf of the appellant cannot be accepted. Respondent No.1 amended the written statement and pleaded that the date of birth of respondent No.1 is 3rd July, 1944 and his father Shri Vyankatrao died two years after the birth of respondent No.1, which means Shri Vyankatrao died in 1946. It is undisputed that the above amendment was allowed by the trial Court and the order allowing the amendment has not been challenged in any proceedings. Apart from this, the burden was on the appellant to prove that Shri Vyankatrao died after 1956

and findings on this important issue cannot be recorded on the basis of inferences.

I see no reason to interfere with the findings of fact concurrently recorded by the subordinate Courts. The appeal does not raise any substantial question of law. The appeal is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

**sandesh*