

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

Second Appeal No. 15 of 2011

Yadav S/o Ganpat Suryawanshi
Since deceased through his
legal representatives.

.. Appellants.

Versus

Mahadu S/o Ganpat Suryawanshi
Since deceased through his
legal representatives.

.. Respondents.

Shri. R.N. Dhorde, Senior Advocate, instructed by Shri.
P.F. Patni, Advocate, for appellants.

Shri. V.I. Thole, Advocate, for respondents 1(a) to 1(f).

Shri. Punit S. Mehta, Advocate, for respondent Nos.2 to 4.

CORAM: T.V. NALAWADE, J.

DATE : 15th MARCH 2016

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Appeal No.100 of 2006 and of Regular Civil Suit No.105 of 1984 which was pending before the Civil Judge, Junior Division, Gangapur, District Aurangabad. The suit filed by one Mahadu Suryawanshi against the appellant, brother of Mahadu, for relief of

declaration and recovery of possession is decided in favour of the plaintiff. Relief of possession was given to the plaintiff by the trial Court. This decision was challenged in appeal by original defendant Yadav (present appellants are legal representatives of Yadav) by filing Regular Civil Appeal No.100 of 2006 in District Court Aurangabad. The first appellate Court has modified the judgment and decree of the trial Court and has given 1/2 share in the suit property to the plaintiff when relief of possession of specific 3 acres was given by the trial Court. Both the sides are heard.

2) The suit was filed in respect of 6 acres of land from Gat No.436 situated at village Nevergaon, Tahsil Gangapur. The boundaries of this portion were given in the plaint. It is the case of the plaintiff Mahadu that 12 acres portion of Gat No.436 was owned by Ganpat father of the plaintiff and defendant No.1 Yadav and along with Gat No.436, there were other properties of the joint Hindu family of plaintiff, defendant and their father Ganpat. It is contended that one Bhaurao was also brother of the plaintiff but he expired prior to 1948 AD.

3) It is the case of the plaintiff that the property of the joint Hindu family was partitioned between him and defendant No.1 and during partition 6 acres portion, the suit property from land Gat No.436 was given to Housabai, real sister of plaintiff and defendant No.1 as she was deserted by her husband. It is contended that property was given for her maintenance. It is contended that 3 acres portion each was given to plaintiff and defendant No.1 from land Gat No.436.

4) It is the case of the plaintiff that, during lifetime, Housabai remained in possession of the suit property and she was to enjoy the property during her lifetime and the property was given for her maintenance. It is contended that Housabai died issue less. It is contended that as the property was given to her by the joint Hindu family, the plaintiff and the defendant No.1 are entitled to have equal share in the property left behind by Housabai. It is contended that after the death of Housabai, defendant No.1 got entered only his name by joining hands with the revenue authorities as successor of Housabai. It is contended that the plaintiff requested the

defendant to partition this property but on 11-12-1982 the defendant No.1 refused to partition the property and so cause of action took place for the suit.

5) The defendants contested the suit by filing written statement. They admitted that partition took place between plaintiff and defendant No.1 after the death of father. They however denied that the suit property was given to Housabai for her maintenance and it was the joint Hindu family property. They however admitted that Housabai died issue less.

6) It is the case of defendant Yadav that after the partition between him and plaintiff he purchased 3 acres portion from land Gat No.436 and similar portion was purchased by plaintiff also for himself. It is contended that defendant No.1 had purchased 6 acres portion for his sister Housabai and the consideration was paid by defendant No.1 to the vendor. It is contended that the document was executed in favour of Housabai and she started living with defendant No.1 and so the land remained with defendant No.1. It is contended that

defendant was cultivating the land for Housabai. It is contended that as the land was purchased by defendant No.1, ownership was of the defendant No.1 and so after the death of Housabai his name is recorded as owner of the suit property. It is contended that afterwards defendant No.1 partitioned this property amongst his sons and accordingly mutation was made.

7) During pendency of the suit, both, Mahadu and Yadav died and their legal representatives gave evidence in support of aforesaid contentions. It appears that the legal representatives of defendant No.1 filed their own written statement at Exhibit 114.

8) Defendant Nos.1(d) to 1(f), the daughters of Yadav, had filed separate written statement and they have virtually admitted the claim of the plaintiff. They admitted that both Mahadu and Yadav were entitled to succeed to the property left behind by Housabai as the property was given by them to Housabai for her maintenance. It is brought on record that defendant Nos.1(d) to 1(f) had filed a suit against defendant No.1(a) to 1(c), the other

successors of Yadav (Regular Civil Suit No.100 of 1990) and this was in respect of 9 acres portion of Gat No.436. They got share in the present property also along with other property of Yadav. It is contended that said decision was set aside by the first appellate Court but the decision of the first appellate Court is challenged by defendant Nos.1(d) to 1(f) by filing second appeal. As it was the contest amongst successors of Yadav and Mahadu was not involved in the said suit, there is no need to consider the decision given in the said matter but the contentions of some of the successors of Yadav in respect of the present suit property can be considered.

9) The main contention of the plaintiff is that Gat No.436 to the extent of 12 acres was ancestral property and the main contention of defendant Yadav is that he had purchased the suit property, portion of 6 acres for Housabai and it was benami transaction. In any case both the sides contended that the property will not go to the husband of Housabai but it will come back to the family of parents of Housabai.

10) The learned Senior Counsel for appellant submitted that in view of provision of section 14(1) of the Hindu Succession Act, 1956 the property of Housabai was her absolute property as the plaintiff has come with case that property was given to her for her maintenance. He submitted that in view of provision of section 15 of the Act the property will go to the husband of Housabai. This kind of submission made for the first time shows that the appellants are bent upon to see that the plaintiff does not get anything in the suit property.

11) The revenue record shows that 3 acres portion was standing in the name of plaintiff, 3 acres portion was standing in the name of defendant Mahadu and 6 acres portion was standing in the name of Housabai from Gat No.436. In view of this circumstance and as defendant No.1 came with specific case that property was purchased by him in the name of Housabai, burden was on the defendant No.1 to prove that the property was purchased by him and it was benami transaction. Defendant No.1 did not produce even sale deed to prove the contention that the property was purchased in the name of Housabai.

12) Oral evidence of both the sides is as per aforesaid contentions. The oral evidence shows that she was living separate in a separate room. As no revenue record was produced to show entries were made of the names of the plaintiff, the defendant and Housabai after the death of Ganpat, this circumstance becomes relevant and on that basis inference can be drawn that the suit property was given to Housabai by these two brothers during partition of the properties of the joint Hindu family. The first appellate Court has considered the circumstance that Housabai was married and she had right to claim maintenance against husband. As no sale deed is produced in respect of the suit property and also in respect of the two portions which were standing in the names of the plaintiff and defendant No.1, the first appellate Court has drawn inference that the property was owned by the joint Hindu family of plaintiff and defendant No.1 if it was not ancestral property of these two brothers.

13) Admittedly there was ancestral property of these two brothers. Even if for present purpose it is

presumed that these two brothers had purchased the portion of around 12 acres from land Gat No.436, it is not the case that these portions were purchased from self acquired property. The date of purchase was relevant and the circumstance that each brother kept with himself 3 acres portion but six acres portion was shown in the name of Housabai who was their sister speaks loud about the things which must have happened. Housabai had no source of income from which she could have purchased the property on her own. It appears that after the death of Housabai defendant got entered his name in the revenue record but due to such entry, he has not become owner of 6 acres portion.

14) The aforesaid discussion shows that joint family property was given to Housabai by the two brothers and so the property will revert back to them. It was not her absolute property. Thus, there was no question of giving the property to the husband. In any case husband is not the party to the proceeding and this decision will not be binding on the husband of Housabai.

15) It appears that the trial Court had made some order to give specific portion of the suit property to the plaintiff. The first appellate Court has corrected the decision and has rightly asked to see that equitable partition is made and both brothers get equal share. Thus there is no reason to interfere in the decision given by the trial Court and the first appellate Court. The findings are on the questions of fact.

16) The learned Senior Counsel for the appellants has placed reliance on some reported cases like (1) **AIR 1966 Madras 359 (Ayi Ammal v. Subramania Asari)**, (2) **AIR 1972 AP 189 (Bobbalapati Kameswararao v. Kavuri Vasudevarao)**, (3) **AIR 1968 Gujarat 222 (Jayantilal Mansukhlal v. Mehta Chhanalal Ambalal)**; and, (4) **(2011) 11 SCC 483 (Saroja v. Santhilkumar)**. In the last case the Apex Court had held that when there was no record to show that the property was inherited, it was belonging to the father, it needs to be presumed that the property was absolutely belonging to the party in whose name the property was standing. In that matter, it was held that the property was not joint family property. Facts and

circumstances of each and every case are always different. Relevant facts of the present matter are considered and quoted by this Court. In other cases provisions of sections 15(1)(b), 15(2)(a) of the Hindu Succession Act 1956 are considered and discussed and meaning of “inherit” is given. In one reported case, there was gift in the name of daughter and in view of the facts it was held that the property was not inherited by the lady and so the property would go to the husband of the lady in view of the provisions of section 15(1) of the Hindu Succession Act.

17) In the present case some document was made in favour of Housabai. It is already observed that facts of each cases are always different. The two brothers had made arrangement for the maintenance of Housabai or it was given in partition and that arrangement was made from the income made from the ancestral property. Housabai had share in the ancestral property. There is no record of partition to show that any specific share was given to her when partition was effected. In view of these circumstances it needs to be presumed that the suit

property was given to her as her share, it was inherited by Housabai from parents side. Thus, the observations made in the cases cited supra are of no use. No substantial question of law as such is involved in the present appeal. No interference is possible in the decision given by the trial Court and the first appellate Court.

18) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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