

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

**Second Appeal No. 63 of 2016
With
Civil Application No.1026 o 2015**

Komalbai w/o Narayanrao Bramhanathkar
And others. **.. Appellants.**

Versus

Sushilabai w/o Dinkarrao Kulkarni
And Others. **.. Respondents.**

Shri. Suresh H. Munde, Advocate, for appellants.

Shri. S.S. Gangakhedkar, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 8th JUNE 2016.

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.170/2000 which was pending in the Court of the Civil Judge, Junior Division, Gangakhed, District Parbhani and also to challenge the judgment and decree of Regular Civil Appeal No.34/2009 which was pending in the Court of the District Judge-1 Gangakhed. The suit filed by present respondent No.1

Sushilabai for relief of partition and separate possession is decided in her favour. Heard both sides.

2) The plaintiff and defendant Nos.6 and 7 are real sisters and defendant No.1 is the widow of the brother of the plaintiff. Defendant No.5 - Rukminbai was the mother of the plaintiff. Defendant Nos.2,3 and 4 are sons of defendant No.1. One Bapurao was the father of the plaintiff.

3) The suit was filed in respect of 8 agricultural lands situated at village Bramhanathwadi, Tahsil Gangakhed, District Parbhani. It is the case of the plaintiff that the suit property was the ancestral property of Bapurao and so the plaintiff has share in the suit property along with the defendants. It was contended that the defendants are refusing to give share to her and so the suit was required to be filed.

4) The defendant Nos.1 to 3 contested the matter by filing written statement. They admitted that the suit property was the ancestral property of Bapurao. They

contended that the plaintiff is having only 1/15 share in the suit property. They contended that property was given in possession of the husband of the plaintiff for cultivation in the year 1974-75 as husband of defendant No.1 Narayanrao was living at other station and the husband of the plaintiff did not give any income from the land to the defendant Nos.1 to 4. They took defence that the property was partitioned by Narayanrao and it was given to defendant Nos. 1 to 4 and that partition is not challenged and so the suit is not tenable. It is contended that the plaintiff is liable to pay at least Rs. One lakh as the income which was collected by cultivating the suit land.

5) Issues were framed on the basis of the aforesaid pleadings. The trial Court decreed the suit and gave 1/6th share to the plaintiff. The trial Court held that there was no record with the defendant No.1 to show that the plaintiff was liable to give some amount in respect of agricultural income collected by the husband of the plaintiff. One more defence was taken that some properties were already sold and they were not included in the suit and the suit was barred on that count. The trial

Court has held that purchasers are not joined in the suit and no relief is claimed in respect of those properties and so the suit is not barred due to non inclusion of those properties in the suit. By holding that the provision of section 6 of the Hindu Succession Act 1956 which was in force prior to the amendment of 2005 is applicable and by considering notional partition, 1/6th share is given to the plaintiff.

6) This Court has carefully gone through the reasoning given by the Courts below. The learned counsel for the appellant produced paper book of the District Court and this Court has perused the evidence given by the parties before the trial Court. The evidence shows that the property was given for cultivation for some time to the husband of the plaintiff but the evidence also show that for 12 to 14 years prior to the date of the suit the possession was with defendant Nos.1 to 4. The contention that Narayanrao had effected partition and mutation is made in favour of the successors of Narayanrao need not be considered as it is admittedly ancestral, joint Hindu family property. Nothing is given to the plaintiff in the so

called partition. In view of these circumstances in view of the entitlement of the plaintiff as the daughter of Bapurao and also daughter of the widow of Bapurao, the share is calculated by the Courts below. No error is committed by the Courts below. The findings are on questions of fact. No substantial question of law is involved in the matter.

7) In the result, the appeal stands dismissed. Civil Application is disposed of.

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

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