

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

SECOND APPEAL NO. 159 OF 2015

Bapurao Ramkrushna Kane

Age : 55 Yrs., Occ. Agril,

& Service, R/o : Reserve

Bank of India, KDR

Department, Near Centre

Bus Depot, Bhaikhala,

Mumbai – 8.

..... APPELLANT/

[ORI. DEFENDANT]

V E R S U S

1. Smt. Laxmibai Ramkrushna Kane

Age : 77 Yrs., Occ. Agril.,

R/o : 1412, Hudco Colony,

At Post Shirur, Dist. Pune.

2. Sau. Mandakini Bhausahab Bhalekar

Age : 54 Yrs., Occ. Service,

R/o : 1412, Hudco Colony,

At Post Shirur, Dist. Pune.

3. Sau. Savita Savkar Pokharkar

Age : 50 Yrs., Occ. Service,

R/o : S.No. 88, Malwadi

under Kalas, Vishrantwadi, **RESPONDENTS/**

Taluka & Dist. Pune No. 15. **[ORI. PLAINTIFFS]**

4. Chandrabhan Ramkrushna Kane
Age : 54 Yrs., Occ. Pensioner
& Aril., R/o : Kalas, Tq. Parner, .. **RESPONDENT/**
Dist. Ahmednagar. **[ORI. DEFT. NO. 2]**

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Mr. S.S.Jadhavar Advocate for Appellant.

Mr. N.V.Gaware, Advocate for R – 1 to 4.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 11/08/2016

JUDGMENT :

1. The Appeal is '**admitted**'. Notice after admission made returnable forthwith. By consent heard both sides for final disposal on substantial question of law quoted hereinafter.

2. In short, the facts leading to the institution of the Appeal can be stated as follows.

R.C.S. No. 410/2008 was filed by present respondents against appellants for relief of partition and separate possession of ancestral and joint Hindu family property. Agricultural lands and 2 house properties were

mentioned in the plaint as suit properties. Plaintiff No. 1 is the mother of defendant Nos. 1 and 2 and plaintiff Nos. 2 and 3 are the sisters of defendants.

3. Ramkrushna, father of defendants and plaintiff Nos. 2 and 3 was the husband of plaintiff No.1, who died on 25/06/2002. It is contended that till the death of Ramkrushna, there was joint Hindu family of plaintiffs and defendants, though plaintiff Nos. 2 and 3 were married long back. It is the case of plaintiffs that though the land G.Nos. 399 and 923 are standing in the name of defendant No. 1, they belong to joint family. The plaintiffs contended that the defendants are not giving account of the income of the property and they are not giving share to the plaintiffs by partitioning the property.

4. Defendant No. 1 filed Written Statement. He contended that land G.No. 923 and 82 R. portion from G.No. 399 was self-acquired property of Ramkrushna and this property is mutated in the name of defendant No. 1 by Ramkrushna and so this land can not be considered for partition. It was contended that the land G.No. 844 is in

possession of plaintiff No. 1 and she is making income from that property.

5. On the basis of aforesaid pleadings, issues were framed. Both sides gave evidence. The trial Court held that all properties are ancestral and joint Hindu family properties of the parties and to each daughter, $1/20^{\text{th}}$ share was given and to the mother and defendants $6/20^{\text{th}}$ share each was given. In the Appeal filed by original defendants, the District Court modified the shares to make the share of each party as $1/5^{\text{th}}$ by holding that in view of amended provision of Section 6 of the Hindu Succession Act, 1956, daughter is entitled to have equal share along with the sons.

6. Following substantial question of law was formulated for admission of the Appeal.

“ Whether the provisions of Section 6 of the Hindu Succession Act, 1956, as amended in 2005, can be given retrospective effect and equal share can be given to the daughters and sons in ancestral properties of the father ? ”

7. The Judgment delivered by the first appellate Court shows that the Court placed reliance on the decision of Full Bench of this Court reported as 2014 (5) Mh.L.J. - 434 [Badrinarayan Shankar Bhandari & Ors. Vs. Omprakash Shankar Bhandari]. In that case, the provision was interpreted and it was laid down that the provision needs to be given retrospective effect. The case reported as (2016) 2 Supreme Court Cases – 36 [Prakash & Ors. Vs. Phulavati & Ors.] decided on 30/11/2015 shows that the Apex Court has held that the amended provisions can not be given retrospective effect and said provision applies only when the co-parcener and his daughter is alive on the date of commencement of amended Act i.e. 09/09/2005 irrespective of date of birth of daughter and the co-parcner had died thereafter.

8. In the present Appeal, admittedly Ramkrushna died prior to coming into force of amended Act of 2005. In view of these circumstances and as it is not disputed by the plaintiffs that the property was in the hands of Ramkrushna as ancestral property, this Court holds that the provisions of Hindu Succession Act, 1956 which was in force prior to the amendment are

applicable. So, notional partition needs to be effected on the date of death of Ramkrushna. In the notional partition, Ramkrushna can be given $1/4^{\text{th}}$ share and this share will be available for partition amongst his widow and 3 issues. Thus, each issue of Ramkrushna and widow will get $1/20^{\text{th}}$ share [$1/4^{\text{th}} \times 1/5$] in the property of Ramkrushna. Thus, each daughter will get $1/20^{\text{th}}$ share, widow will get $1/4^{\text{th}} + 1/20^{\text{th}} = 6/20^{\text{th}}$ share and similarly each son will get $6/20^{\text{th}}$ share. Such shares were given by the trial Court. In view of the interpretation made by the Apex Court and aforesaid circumstances, this Court holds that the Judgment and decree of the District Court needs to be set aside.

9. In the result, the Appeal is partly allowed. The Judgment and decree of the first appellate Court is hereby set aside and Judgment and decree of trial Court is restored. Decree is to be prepared accordingly.

10. In view of disposal of Appeal, C.A. No. 4373 of 2015 stands disposed of.

[T.V.NALAWADE, J.]

