

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 649 OF 2016
WITH
CIVIL APPLICATION NO. 12848 OF 2016

Namdeo s/o Govindrao Wagh,
Age 53 years, occup. Agriculture,
R/o Lingdari, Tq. Phulambri, .. Appellant/Original
District : Aurangabad Defendant No. 1

versus

- 1) Haridas Govindrao Wagh,
since deceased, through
Legal Representatives :-
- 1-a) Jagannath Haridas Wagh,
Age : 24 years, occup. Agril.,
- 1-b) Nanda Haridas Wagh,
Age : 22 years, occup. Household,
- 1-c) Mathurabai w/o Haridas Wagh, .. Respondent/
Age : 40 years, occup. Household Orig. Plaintiff
- 2) Limba Narayan Tathe
Age : 46 years, occup. Agril
R/o Wakod, Tq. Phulambri,
District : Aurangabad
- 3) Walhabai Sonaji Ghuge,
Age : 44 years, occup. Agriculture;
R/o Kankora, Tq and Dist.Aurangabad
- 4) Nanubai w/o Bhagaji Tathe,
Age : 46 years, occup. Agriculture .. Respondents/
R/o Wakod, Tq. Phulambir, Orig. Defendants
Dist. Aurangabad No. 2 to 4

Mr. M. M. Ambhore, Advocate for appellants
Mr. R. R. Imale, Advocate for respondents no. 1A to 1C

Coram : Sunil P. Deshmukh, J.

Date : November 21, 2016

Oral judgment :

1. Heard learned counsel for appearing parties.
2. The proceedings bearing regular civil suit no. 186 of 2008 had been instituted by deceased respondent no. 1 seeking partition and separate possession of suit land, contending all the ancestral properties among the parties had been partitioned save suit land. Father of the plaintiff and defendant no. 1 had died in the year 1975. Suit land had been purchased by father in the name of defendant no. 1 and son of maternal uncle of plaintiff and defendant no.1. Defendant no.1 had no source of income and as such the father had purchased the property in the name of defendant no. 1 who is elder brother of the plaintiff. Since defendant no. 1 did not heed plaintiff's request to give his share in suit land, the suit has been filed for partition and separate possession.
3. Defendants 3 and 4 who happen to be sisters of plaintiff and defendant no. 1 had given consent to the plaintiff's claim and had further had not shown any interest in the suit land nor have claimed share in the same. They had stated that the

suit as prayed for be decreed whereunder the plaintiff had claimed $\frac{1}{2}$ share in the suit land which, to a large extent, indicates not only that they were not interested in suit land but also the same amounts to acceptance of that suit land be divided equally between the brothers - the plaintiff and defendant no. 1.

4. After scanning evidence both the courts, trial as well as appellate, have appreciated that the suit land has been purchased by father of plaintiff and defendant no. 1 along with their maternal uncle. As such, father had $\frac{1}{2}$ share in the suit land and the maternal uncle had rest of the half. Since this is the position in respect of the suit land, both the courts have considered that the plaintiff as well as defendant no. 1 would succeed to $\frac{1}{4}$ th share each in the suit land.

5. Learned counsel Mr. Ambhore appearing for appellant-defendant no. 1 submits that while partition had been directed, the same should take within its fold the relevant provisions of the Hindu Succession Act and impugned judgments and decrees do not depict that the relevant provisions had fallen for consideration while decreeing the suit. He, therefore, submits that on this ground, it can be

said that the question of substantial law would arise in the matter.

6. Learned counsel Mr. Imale appearing on behalf of the legal heirs of the plaintiff submits that aforesaid contention of the appellant as a matter of fact ignores the position that defendants no. 3 and 4 have shown disinclination and have not claimed share in the suit land and have further prayed for decreeing the suit as prayed for by the plaintiff whereunder the plaintiff has claimed $\frac{1}{2}$ share. He, therefore, submits that in the circumstances, the provisions of the Hindu Succession Act in the face of aforesaid appear to have been duly complied with.

7. Upon hearing the learned counsel for the appearing parties, I find substantial force in the submission of Mr. Imle on behalf of legal heirs of the plaintiff and particularly having regard to that defendant no. 1 has not been able to support his case that the suit land had been purchased by him, by producing any cogent material.

8. The appellate court has aptly observed in paragraph no. 13 reading thus ;

" 13. Here it is pertinent to note that, the evidence of the plaintiff that, the suit land is ancestral property is fully supported by

maternal uncle Narayan who himself has purchased the suit land in the year 1970 as well as plaintiff's two real sisters i.e. defendant nos. 3 and 4. All of them have categorically stated on oath that, their father Govindrao Wagh and their maternal uncle Narayan Tathe both have purchased the suit land from the funds of joint family property. At that time both defendant no. 1 Namdeo and Limba were minor i.e. aged about 11 years old and since then the suit land is standing in the name of defendant no. 1 and Limba and their father Narayanrao Tathe and Govindrao Wagh were shown as their guardian. Therefore, initially, plaintiff has proved that, the suit land is ancestral property. "

9. The appellate court has further considered that the appellate - defendant no. 1 has not been able to show that the purchase had been made from the consideration as alleged to have been tendered by him which, in turn, has been received as '*streedhana*' to his mother and thus suit land shall not be considered as ancestral land. The appellate court has also considered that fluctuating stands from time to time are taken up by the appellant - defendant no. 1 as on one hand he purports to contend as aforesaid and on the other, contends that the purchase of suit land had been made from the amount provided by him to his maternal uncle, him doing some labour work.

10. The trial court has observed that defendant no. 1 in his written statement has admitted plaintiff's contention and supported his claim and has also admitted that the plaintiff should get 1/2 share in the suit property.

11. In view of aforesaid background, it does not appear that the trial as well as appellate courts have committed any error in deciding the suit and decreeing the same as prayed for. It thus can hardly be said that the matter would give rise to substantial question of law as is sought to be contended on behalf of the appellant.

12. Second appeal, as such, stands dismissed.

13. Civil application does not survive and stands accordingly disposed of.

SUNIL P. DESHMUKH, J.
JUDGE

pnd