

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 625 OF 2012
WITH
CIVIL APPLICATION NO. 10740 OF 2012

- 1) Rajabhau S/o Ranuji Jagtap
Age : 53 years, Occ : Agriculture
- 2) Annasaheb S/o Rajabhau Jagtap
Age : 25 years, Occ : Agriculture
- 3) Manjabai @ Bhausahab Rajabhau Jagtap
Age : 23 years, Occ : Agriculture
- 4) Chandrakalabai W/o Rajabhau Jagtap
Age : 46 years, Occ : Household.

All R/o Sawargaon, Tq. Majalgaon,
District : Beed.

....Appellants
(Orig. Defendants)

Versus

- 1) Kadubai W/o Radhakishan Kanade,
Age : 63 years, Occ : Household
R/o Majalgaon Tq. Majalgaon,
Dist. Beed.
- 2) Shushilabai W/o Babasaheb Shinde,
Age : 56 years, Occ : Household,
R/o Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar at present
R/o Savergaon, Tq. Majalgaon,
Dist. Beed.
- 3) Kamalbai W/o Janardhan Late,
Age : 38 years, Occ : Household
R/o Murumgaon, Tq. Sailu,
Dist. Parbhani.
- 4) Suresh S/o Uddhav Jagtap,
Age : 35 years, Occ : Agriculture,

R/o Sawargaon, Tq. Majalgaon,
Dist. Beed.

- 5) Balkishan S/o Shivdayal Zanwar
Age : 49 years, Occ : Agriculture & Business
- 6) Surekha W/o Balkishan Zanwar
Age : 43 years, Occ : Household.
- 7) Shivdayal W/o Mangilal Zanwar
Age : 70 years, Occ : Agriculture & Business

R-5 to 7 R/o Near Old Bus Stand,
Majalgaon, Tq. Majalgaon,
Dist. Beed.

- 8) Sitaram S/o Bapurao Padgham,
Age 42 years, Occ : Agriculture
- 9) Kundlik S/o Bapurao Padgham,
Age : 40 years, Occ : Agriculture

R-8 to 9 R/o Sawargaon
Tq. Majalgaon, Dist. Beed.

....Respondents

Mr. V.D. Salunke , Advocate for appellants.

Mr. B.S. Kudale, Advocate for respondent Nos.1 & 2.

Mr. Vivek Bhavhtankar, Advocate for respondent No.3.

WITH
SECOND APPEAL NO. 09 OF 2013
WITH
CIVIL APPLICATION NO. 174 OF 2013

- 1) Balkishan S/o Shivdayal Zanwar
Age : 49 years, Occ : Agriculture & Business
R/o : Near Old Bus Stand,
Majalgaon, Tq. Majalgaon,
Dist. Beed.

- 2) Surekha W/o Balkishan Zanwar
Age : 43 years, Occ : Household.
R/o : Near Old Bus Stand,
Majalgaon, Tq. Majalgaon,
Dist. Beed.
- 3) Shivdayal S/o Mangilal Zanwar
Age : 70 years, Occ : Agriculture & Business
R/o : Near Old Bus Stand,
Majalgaon, Tq. Majalgaon,
Dist. Beed.

...Appellants**Versus**

- 1) Rajabhau S/o Ranuji Jagtap
Age : 53 years, Occ : Agriculture
- 2) Annasaheb S/o Rajabhau Jagtap
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- 3) Manjabai @ Bhausahab Rajabhau Jagtap
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- 4) Chandrakalabai W/o Rajabhau Jagtap
Age : 46 years, Occ : Household.
- 5) Kadubai w/o Radhakishan Kanade,
Age : 63 years, Occ : Household,
All R/o : Majalgaon, Tq. Majalgaon,
District : Beed.
- 6) Shushilabai W/o Babasaheb Shinde,
Age : 56 years, Occ : Household,
R/o Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar at present
R/o Savergaon, Tq. Majalgaon,
Dist. Beed.
- 7) Kamalbai W/o Janardhan Late,
Age : 38 years, Occ : Household
R/o Murumgaon, Tq. Sailu,
Dist. Parbhani.
- 8) Suresh S/o Uddhav Jagtap,

Age : 35 years, Occ : Agriculture,
R/o Sawargaon, Tq. Majalgaon,
Dist. Beed.

9) Sitaram S/o Bapurao Padgham,
Age : 42 years, Occ : Agriculture,
R/o : Sawargaon, Tq. Majalgaon,
Dist. Beed.

10) Kundlik S/o Bapurao Padgham,
Age : 40 years, Occ : Agriculture
R/o : As above.

R-8 to 10 R/o Sawargaon,
Tq. Majalgaon, Dist. Beed.

...Respondents

Mr. A.S. Bajaj, Advocate for appellants.

Mr. B.S. Kudale, Advocate for respondent Nos.5 & 6.

Mr. Vivek Bhavhtankar, Advocate for respondent No.8.

CORAM : T.V. NALAWADE, J.

DATED : 29TH June, 2016.

JUDGMENT :

1) Both the appeals are **admitted**. Notice after admission is made returnable forthwith. By consent, heard both the sides for final hearing.

2) The appeals are filed against judgment and decree of Regular Civil Appeal No. 66/2005, which was pending in the Court of District Judge-1, Majalgaon, District Beed. The suit filed by present respondent Nos. 1 to 3 for relief of partition and separate possession bearing Special Civil Suit No. 32/2004 (old

Special Civil Suit No. 54/1999) which was pending in the Court of Civil Judge, Senior Division, Majalgaon was dismissed by the Trial Court. This decision is set aside by the First Appellate Court and the First Appellate Court has decreed the suit. Both the sides are heard.

3) In short, the facts leading to the institution of the present appeals can be stated as follows :-

Plaintiffs, defendant Nos. 1 to 3 and some other defendants are successors of one Ranuji. It is contended that suit land bearing Survey No. 58/1, admeasuring 11 Acres 16 Gunta, Survey No. 59/1 admeasuring 16 Acres 31 Gunta, Survey No. 187/1, admeasuring 2 Acres 24 Gunta, Survey No. 188/1, admeasuring 5 Acres 14 Gunta, one plot having No. 111 in the record of Village Panchayat, other plot having No. 105, having size of 80 x 50 ft. are the properties left behind by Ranuji and so they are ancestral and joint family properties of plaintiffs and some of the defendants. It is their case that Ranuji had married two wife viz. Gangabai and Sitabai. They have contended that plaintiff Nos. 1, 2 and defendant No. 1 are the issues of Ranuji born from Sitabai. It is contended that Gangubai died prior to Ranuji, leaving behind one Jankabai. Plaintiff No. 3 Kamalabai is daughter of Jankabai and three other issues of Jankabai are

made defendants. It is contended that all the plaintiffs are entitled to have share as per the principle of inheritance of Hindu Law in the properties left behind by Ranuji and Sitabai.

4) It is the case of plaintiffs that after the death of Ranuji, for some time plaintiffs and defendant No. 1 cultivated the lands jointly. It is contended that some land was acquired for Majalgaon project and one house property was acquired for the same project. It is contended that after the acquisition, alternate place was given under the State Act made for rehabilitation of displaced persons.

5) Defendant No. 4 is wife of defendant No. 1. It is contended that to deprive the plaintiffs of their share in the suit properties, defendant Nos. 1 to 4 created some revenue record and then executed sale deed in favour of defendant No. 5 in respect of land Survey No. 58/1 to the extent of 4 Acres. It is contended that plaintiffs did not realize the mischief as till the year 1996, defendant Nos. 1 to 4, members of the family of defendant No. 1 were giving the crop share. It is contended that when in 1996, the defendants refused to give crop share, plaintiffs searched the record and they realized that some false record was created by the defendants and some lands were also

shown to be sold to defendant Nos. 5, 6 and 8.

6) Defendant Nos. 1 to 4 filed written statement and contested the matter. They admitted the relationship. They also admitted that the suit properties were left behind by Ranuji. They contended that they had never given crop share to plaintiffs. They contended that Ranuji was owner of Survey Nos. 55/1, admeasuring 8 Acres 17 Gunta and 55/3 and those properties are not included in the suit and the suit is bad for non inclusion of those properties. It is contended that the land Survey No. 55/1, admeasuring 8 Acres 17 Gunta was mortgaged by defendant No. 1 to one Laxman Shinde and then the property was got redeemed in the name of plaintiff No. 2. It is contended that defendant No. 1 had paid mortgage money to Laxman Shinde and so, the sale deed was executed in favour of plaintiff No. 2 and so, their property needs to be considered for partition purpose. It is contended that land Survey No. 55/3 admeasuring 4 Acres 8 Gunta of village Sawargaon was given to father of plaintiff No. 3 and defendant Nos. 9 and 10 by name Baburao Padgham and Baburao sold the said property.

7) It is the case of defendant Nos. 1 to 4 that plaintiffs caused defendant Nos. 1 to 6 to sell the land Survey No. 189/1

to the extent of 5 Acres 14 Gunta of village Sawargaon to persons like Shaikh Khayyum, Shaikh Kalumiya and Shaikh Kadar in the year 1987 and the sale proceeds were collected by plaintiffs of their share and no money was given to defendant No. 1 from the sale proceeds. It is contended that land admeasuring 1 Hectore was sold from Survey No. 55 by plaintiff No. 2 to one Radhakishan in the year 1994 and this consideration was also received by plaintiff No. 2. It is contended that due to these circumstances, plaintiffs have received their share in ancestral and joint family properties and so, they are not entitled to get share in the remaining properties.

8) It is the case of defendant Nos. 1 to 4 that Jankabai, daughter of Ranuji was having 5 Acres land in Survey No. 187/1, but she sold the land to one Ghatol. It is contended that the remaining portion was with defendant No. 1 and he has given this portion to defendant Nos. 2 to 4.

9) It is the case of defendant Nos. 1 to 4 that defendant No. 1 had given area of 25 x 40 ft. out of the property bearing Village Panchayat No. 105 to father of defendant No. 9, 10 and plaintiff No. 3 and this property is in possession of defendant Nos. 9 and 10 and they are living there.

10) Defendant Nos. 6 to 8, purchasers from defendant No. 1 filed written statement and contested the matter. They contended that after the death of Ranuji, defendant No. 1 had become full owner of the properties and as his name was entered in the revenue record, they purchased the property from him. It is contended that the possession of defendant No. 1 was for the period of more than 12 years and he had become owner due to adverse possession against the plaintiffs of the property sold to defendant Nos. 6 to 8.

11) It is the case of defendant No. 6 that he has purchased 2 Acres 34 Gunta land from Survey No. 58/1 under registered sale deed in 1996 from defendant Nos. 2 to 4 for consideration of Rs. 33,000/-. Defendant No. 7 has contended that he had purchased portion of Survey No. 58/1 under the sale deed of 1996 for consideration of Rs. 41,000/- from the defendant Nos. 2 to 5. Thus, the defendant Nos. 2 to 6 contended that they have bonafide purchasers for valuable consideration without notice. They requested the Court to protect their right and possession.

12) Issues were framed on the basis of aforesaid

pleadings. The Trial Court has held that some properties which are mentioned in written statement by defendant Nos. 1 to 4 are not included in the suit and for that suit is bad. It is also observed that some heirs of Ranuji are not made parties to the suit like sisters of defendant Nos. 9 and 10 and the suit is bad for non joinder of necessary parties. The circumstance that some sale proceeds were paid to plaintiff when land was sold to persons like Shaikh Khayyum, Shaikh Kalumiya is also considered against plaintiffs. It is held that there was entry of name of defendant No. 1 in the revenue record and so, defendant Nos. 6 to 8 are bonafide purchasers. It is held that it was necessary for plaintiffs to challenge the transactions made in favour of defendant Nos. 6 to 8 within three years. With these observations, the suit was dismissed by the Trial Court.

13) The First Appellate Court has held that the transactions made in the year 1996 in favour of defendant Nos. 6 to 8 were not binding on plaintiffs to the extent of their share in the joint family properties and as the suit was filed in the year 1999, it was within limitation. The First Appellate Court calculated the shares to which plaintiffs and defendants are entitled as per the principles of Hindu Law. Share of 4/15 is given to plaintiff Nos. 1, 2 and defendant No. 1. Plaintiff No. 3,

defendant Nos. 9 and 10 are given share of 1/15 each. The First Appellate Court has directed to make equitable partition and permission is given to give share which may fall to the share of defendant No. 1 to the purchasers, defendant Nos. 6 to 8.

14) The learned counsel for appellants, original defendant Nos. 1 to 4 in one matter and defendant Nos. 6 to 8 drew attention of this Court to some admissions given by plaintiff in the evidence. It is brought on the record that one property which was sold by defendant No. 1 is purchased by plaintiff, but that property came under sale deed and so, it cannot be said that the property was given by defendant No. 1 to the plaintiff. Admittedly, some proceeds of sale of one property was also given to plaintiff, but that does not mean that entire proceeds were given to plaintiff and in view of that amount, plaintiff had relinquished the right in the suit properties. Some properties which were sold more than 33 years back are not mentioned in the suit and due to this single circumstance, it cannot be said that plaintiffs ought to have included those properties also. One property was shown to be sold with the consent of plaintiff, but that does not mean that the sale proceeds were given to plaintiff. In any case, it was necessary for defendant Nos. 1 to 5 to prove that plaintiffs had relinquished

their right in the suit properties. In view of the nature of pleadings in plaint and written statement filed by defendant Nos. 1 to 5 and even by defendant Nos. 6 to 8 inference was easy that the properties had come to the parties from Ranuji and they were their joint family properties. Strange defence is taken that defendant No. 1 had become owner due to adverse possession as his name was entered after the death of Ranuji in the revenue record. If aforesaid circumstances which are pleaded in the written statement are considered, it can be said that defendant No. 1 was not disputing that plaintiffs had share in the suit properties that is why he was taking consent of plaintiffs and he was giving them share in the sale proceeds. In view of these circumstances and the dates of the transactions made in respect of the suit properties, there was nothing with the defendants to prove that defendant No. 1 had become owner due to adverse possession.

15) In respect of one daughter of Janakabai, who is entitled to around 1/60th share it was submitted that the whereabouts of that lady were not known. In any case, share can be carved out in respect of that lady though she was not made party and further that lady was to get share in the property of Jankabai, one branch which was entitled to get 1/15 share. Due

to absence of said daughter of Jankabai on record, the shares of parties could not have changed in view of the principles of Hindu Law governing inheritance of the property by succession in such cases.

16) The learned counsel for appellants placed reliance on one case reported as **2016 (1) Mh.L.J. 1 [Prakash and Ors. Vs. Phulavati and Ors.]**. In this case, the Apex Court has done the interpretation of amended provision of section 6 of Hindu Succession Act, 1956 as amended in the year 2005. This interpretation or even the provisions made by the Amendment of 2005 need not be used in the present case as admittedly, Ranuji died before coming in to force of this amendment, in the year 1988 and it needs to be presumed that partition opened in the year 1988 for successors of Ranuji.

17) Ranuji had one widow, one son and two daughters. He had four daughters of his deceased daughter Jankabai also his heirs. In view of these circumstances, notional partition needs to be done first amongst Ranuji, his widow Sitabai and his son Rajabhau. In the first notional partition each would get 1/3rd share in the suit properties. Sitabai died after Ranuji and so, she was entitled to succeed to property which was allotted to Ranuji

in notional partition. Thus, $\frac{1}{3}$ rd share which could have been allotted to Ranuji in the first partition needs to be divided amongst his successors like widow Sitabai, two daughters one son and one branch of Jankabai. Thus, there were five successors who succeeded to the $\frac{1}{3}$ rd share allotted to Ranuji and so, these five successors of Ranuji would get equal share, each $\frac{1}{5}$ th share in $\frac{1}{3}$ rd share allotted to Ranuji. Thus, Sitabai, widow of Ranuji would get $\frac{6}{15}$ th share ($\frac{1}{3} + \frac{1}{15}$). After the death of Sitabai, this $\frac{6}{15}$ share will go to her three issues (two daughters and one son) equally. In the share of Ranuji which was $\frac{1}{3}$ rd, these three issues had equal share along with Sitabai and so, in the second partition they would also get $\frac{1}{15}$ share. After the death of Sitabai they would again get equal share in the property of Sitabai, which was $\frac{6}{15}$ th share. It will be divided amongst three issues of Sitabai equally. Thus, the two daughters of Sitabai (plaintiff Nos. 1 and 2) will get $\frac{3}{15}$ th share each. Rajabhau, defendant No. 1 will get $\frac{8}{15}$ th share. As plaintiff No. 3 is successor of Jankabai and Jankabai left behind four issues, $\frac{1}{15}$ th share will be required to be divided amongst four issues and so, each successor of Jankabai will get $\frac{1}{60}$ th share.

18) In view of the aforesaid entitlement of the successors of Ranuji, partition needs to be made. Accordingly, judgment and

decree of First Appeal needs to be modified. This modification will be for the benefit of not only defendant Nos. 1 to 5, but it will be for the benefit of defendant Nos. 6 to 8, purchasers also as share of defendant No. 1 will increase and share of plaintiffs will decrease. So, the following order is made.

ORDER

Both the Appeals are partly allowed. The judgment and decree of first appellate court is modified to make the shares of the parties as follows.

The share of Rajabhau will be 8/15th. The share of Kadubai will be 3/15th. The share of Sushila will be 3/15th. The share of 4 successors of Jankabai will be 1/60th each.

So far as the rights of the purchasers are concerned, the observations made by the first appellate Court in para No. 40 are to be used and it is left to the concerned authority to see that equitable partition is made as observed by the first appellate Court.

Other part of the Judgment and decree of the first appellate Court is maintained.

Decree is to be prepared in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/