

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

916 SECOND APPEAL NO. 13 OF 2015
WITH CIVIL APPLICATION NO.178/2015 IN SECOND APPEAL
NO.13/2015

CHAGAN FAKIRA SATHE AND ANOTHER
VERSUS
SAMBHAJI FAKIRA SATHE AND ANOTHER

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Advocate for Appellants : Mr. Garud N. C.
Advocate for Respondents : Mr. Karpe Rahul R.

CORAM : T. V. NALWADE, J

DATE : 28th April, 2016

PER COURT :

1. The appeal is filed by original defendants of Regular Civil Suit No.215/2007 which was pending in the court of Civil Judge, Senior Division, Ahmednagar. The suit was filed for the relief of partition and separate possession in respect of agricultural land and house property. The house property described in Para 1-B is the subject matter of the present appeal. The first appellate court has given decree in respect of house property described in para 1B of the plaint and that decision is challenged by the defendants. In respect of the agricultural lands mentioned in Para 1A, there is no dispute and decree to that extent is not challenged. Both the sides are heard.

2. Fakira was father of plaintiff Nos.1, 2 and defendant No.1. Defendant No.2 Mirabai is wife of defendant No.1. Fakira had married two wives. One Thakubai was second wife of Fakira. As per the case of plaintiffs, she was step mother of plaintiffs and defendant No.1. It is the case of plaintiffs that the property described in Para 1B, City Survey No. 676, was purchased from one Dhondiba Rama Sathe in the name of Thakubai. It is contended that during her life time, Thakubai had applied to village panchayat for transferring the property in the name of plaintiff No.2 and defendant No.1 and such resolution was passed by the village panchayat on 28.05.1999. It is contended that as property was purchased for the joint family in the name of Thakubai, the plaintiffs and defendants have equal share in the house property. It is contended that the defendants have tried to show that the ownership has passed to them by getting executed the sale deed of the year 2005.

3. Defendant Nos. 1 and 2 filed joint written statement and they denied the aforesaid contention. They denied even relation of Thakubai with Fakira. They contended that the house property was self acquired property of Thakubai and by registered sale deed dated

22.02.2005 the property was sold to defendant no.2 by Thakubai and so the defendant no.2 is absolute owner of this house property.

4. On the basis of aforesaid pleadings, issues were framed. The defendants had filed counterclaim as they wanted equitable partition. The plaintiffs had come with the case that agricultural land were already partitioned and there was oral partition and the plaintiffs and defendant No.1 were in possession of their separate shares. The defendants come with specific case that there was no partition and the counterclaim is decreed in their favour.

5. In view of the aforesaid circumstances, it can be said that in two ways, the plaintiffs were claiming shares in the house property. Firstly, they had contended that Thakubai was not absolute owner of house property purchased in the name of Thakubai for joint family and so they are entitled to get equal share in the property. Secondly, they wanted to show that even though sale deed is shown to be executed in favour of defendant no.2, there is no separate source of income of defendant no.2 and it needs to be presumed that house property was purchased from the income of

ancestral and joint Hindu family property.

6. It can be said that there is no specific pleading of defendant no.2 showing that she had independent source of income. She has given some evidence that she had sold some ornaments but that oral evidence is not convincing. The consideration is around Rs.60,000/-. Though it appears that defendant no.1 was serving in Army, it is not his specific case that from his income, the property was purchased by him in the name of defendant No.2. There was ancestral joint Hindu family, agricultural land admeasuring around 6 H. Thus, there was sufficient nucleus. In view of this circumstance, burden was heavy on the defendants to prove that the suit property is self acquired property of defendant no.2 and further, it was self acquired property of Thakubai.

7. Some evidence is given by defendant No.2 but that evidence is not at all convincing. When the defendants themselves have contended that there was Hindu Joint Family and the house property was not partitioned, there was not much scope for them to prove that it was self acquired property of Thakubai. They went to the extent of denying relationship of

Thakubai with Fakira when in the sale deed Thakubai has shown Fakira as her husband. In view of these circumstances, this court holds that the District Court has not committed error in giving finding that it was a joint Hindu family property of Thakubai and it is not a self acquired property of defendant No.2. It is finding on question of fact and no interference is possible in that findings. So the appeal stands dismissed.

(T. V. NALAWADE, J.)

JPC