

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

**Second Appeal No. 401 of 2011
With
Civil Application No.9954 of 2011**

Rambhau s/o Dashrath Kale
Deceased through his legal
representatives & Others.

.. Appellants.

Versus

Subhadra Anna Adhav.

.. Respondent.

Shri. V.D. Hon, Senior Advocate, for appellants.

Shri. K.S. Bhore, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 22 JUNE 2016

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil suit No.149/1997 which was pending in the Court of the Civil Judge Junior Division Jamkhed and also against the judgment and decree of Regular Civil Appeal No.383/2004 which was pending in the Court of the District Judge-7 Ahmednagar. The suit

filed by the present respondent Subhadra Adhav for relief of partition and separate possession of the joint Hindu family property is decided in her favour. Heard learned Senior Counsel for the appellants.

2) The suit was filed in respect of land Gat No.237 admeasuring 1 hectare 25 R and the land Gat No.238 admeasuring 76 R. It is the case of the plaintiff that the suit properties were originally owned by Laxmibai, grand mother of plaintiff on mother's side. It is contended that Laxmibai had 4 daughters and one daughter of Laxmibai Gaubai, mother of the plaintiff succeeded to Laxmibai and she got the suit property. Defendant Nos.1 and 2 are brothers of the plaintiff and issues of Gaubai. Defendant No.3 is wife of defendant No.2. It is the case of plaintiff that as the property had come to plaintiff and defendant No.1 and 2 from their mother, plaintiff has 1/3rd share in the property. It is her case that behind her back defendants have entered name of defendant No.3 in the record to deprive the plaintiff of her share and so she is made party to the suit.

3) Defendant No.2 appeared in the suit and contested the matter by filing written statement. He contended that after the marriage of the plaintiff she did not remain member of the joint Hindu family. He contended that in the revenue record mutations were made and names of defendant Nos.1 and 2 were also entered after death of their mother and so plaintiff is not entitled to get share in the property.

4) On the basis of the aforesaid pleadings issues were framed. Both the sides gave evidence.

5) In view of nature of pleadings quoted above, it can be said that there was no scope at all to the defendants to say that the plaintiff is not entitled to get her share separated. As per provision of section 15 of the Hindu Succession Act, after the death of Gaubai, female Hindu, property devolves equally on her children. Till partition takes place they remain co-owners. In view of these circumstances, the defence of ownership by adverse possession also could not have been taken. Mere mutations made in favour of one or two successors of such

last owner cannot deprive the other successor of share. Thus no arguable point for consideration is involved and both the Courts have rightly held that the plaintiff is entitled to 1/3rd share. The findings are of finding on fact and it is not possible to formulate substantial question of law in the matter. In the result, the appeal stands dismissed. Civil Application stands disposed of.

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

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