

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

**5 SECOND APPEAL NO. 646 OF 2015
WITH
CA/8745/2016
IN
SA/646/2015**

**RUPCHAND NARAYAN PATIL
AND OTHERS**

VERSUS

**MIRABAI DAGADUBA KANNAR
AND OTHERS**

.....

Mr. G.V.Wani, Advocate for Appellants.

Mr. A.I.Deshmukh, Advocate for R – 1.

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CORAM : T.V.NALAWADE, J.

DATE : 20th JUNE, 2016

ORDER :-

. The Appeal is filed by the original defendants of R.C.S.No. 83/2007 which was pending in the Court of the Civil Judge [Jr.Division], Jamner, district Jalgaon. The Suit was filed by respondent No. 1 Mirabai for relief of partition and separate possession of her share against her uncles and the Suit was decided in her favour by the trial Court. The trial Court has held that the plaintiff is entitled to 1/3rd share

in the suit properties. This decision is confirmed in R.C.A. No. 207/2009 by the Principal District Judge, Jalgaon. Heard learned counsel for the appellants/defendants.

2. It is the case of Mirabai that Sitaram was the common ancestor of the plaintiff and the defendants. Sitaram had 3 sons viz. Narayan, Ramkrishna and Ramchandra. The plaintiff is the only issue of Ramkrishna. The defendants are the successors of Narayan and Ramchandra. These brothers had one sister also, but she has not left behind any successor.

3. It is the case of the plaintiff that the agricultural lands [6 in number] mentioned in the plaint, were owned by Sitaram, the common ancestor, and as successor of Ramkrishna, Mirabai is entitled to get $1/3^{\text{rd}}$ share in these properties. It is her case that after the death of Sitaram, name of her father was entered in the revenue record and after the death of Ramkrishna, name of the plaintiff was entered in the revenue record as the successor.

4. It is the case of the plaintiff that after the death of Ramchandra, her mother started living with her parents

along with the plaintiff, but no partition had taken place. It is contended that the defendants had told that it was costly affair to create the record of partition, and so partition was not effected and separate possession was not given to the plaintiff. It is contended that she then realized that behind her back, the defendants, successors of Narayan and Ramchandra, showed on the record that partition had taken place between these 2 branches and they had received the shares in the property. It is contended that due to the conduct of the defendants, she gave notice and asked the defendants to give her share. It is contended that as they did not give her share, she was required to file the Suit.

5. Defendant Nos. 3 and 6 filed Written Statement to contest the matter. They denied everything. They denied that Ramkrishna, father of the plaintiff, had share in the property and they contended that by mistake his name was entered in the revenue record after the death of Sitaram. Alternatively they contended that the plaintiff left the joint family along with her mother 50 years prior to the Suit and so the Suit is not within limitation. Defendant Nos. 4 and 5 adopted this Written Statement. Other defendants did not file Written Statement to contest the matter.

6. Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. Both the Courts below have held that the father of the plaintiff was entitled to get 1/3rd share and the plaintiff is entitled to get that share in the suit properties. As it was joint Hindu family property, there was no question of consideration of the defence of limitation. Both the Courts below have considered the oral evidence. In the revenue record also, name of the plaintiff was continued even after creation of record by other 2 branches in their favour. There is virtually no evidence with the defendants to show that partition was effected at any time amongst 3 branches, 3 successors of Sitaram and so the Suit is decreed by the Courts below. The findings on the issues are the findings on facts. No substantial question of law as such is involved in the matter.

7. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 8745 of 2016 does not survive and stands disposed of.

[T.V.NALAWADE, J.]

