

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

Second Appeal No. 546 of 2013

Dattatraya S/o Laxmanrao Phadnis. .. **Appellant.**

Versus

Sk. Moin S/o. Sk. Ahmed
And Others.

.. **Respondents.**

Shri. Mukund Ambekar, Advocate, for appellant.

Shri. P.S. Agrawal, Advocate, for respondent No.1.

Shri. B.S. Kudale, Advocate, for respondent No.4.

With

Second Appeal No. 547 of 2013

Dattatraya S/o Laxmanrao Phadnis. .. **Appellant.**

Versus

Sarjabai w/o Bhikaji Garad
And Others.

.. **Respondents.**

Shri. Mukund Ambekar, Advocate, for appellant.

Shri. B.S. Kudale, Advocate, for respondent No.1.

Shri. P.S. Agrawal, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 21st MARCH 2016

ORDER:

1) The two second appeals are filed against the judgments and decrees of two first appeals which were pending in the Court of the District Judge-1, Hingoli. Two regular civil appeals were filed by the original plaintiffs of Regular Civil Suit No.249/2005 which was pending in the Court of the Civil Judge, Senior Division, Hingoli. The suit was filed for relief of declaration that defendant No.1 Dattatraya Phadnis, husband of Gangabai, was not entitled to execute the decree given in favour of Gangabai in Suit No.172/1991. Both the sides are heard. This Court has perused the original record.

2) The deceased Dattatraya had one son Anantrao and Gangabai is successor of Anantrao. Dattatraya had another son by name Ramrao and Jankabai was widow of Ramrao. The third son Keshavrao had died issue less in the year 1991. Gangabai was married with present appellant Dattatraya Phadnis.

3) Gangabai had filed Regular Civil Suit No.172/1991 against Jankabai for relief of partition of the property left behind by Dattatraya. It was agricultural land in two portions. Jankabai sold the property during pendency of the suit to the plaintiffs of Regular Civil Suit No.249/2005. The suit filed by Gangabai was decided in her favour on 15-7-2000. Gangabai died in the year 2001, before executing the decree which was made in her favour. As husband of Gangabai, Dattatraya Phadnis filed execution proceeding. Regular Civil Suit No.249/2005 came to be filed by the purchasers from Jankabai for declaration that husband had no right to get execution of the decree given in Suit No.172/1991 in favour Gangabai and he had no right or interest in the suit property.

4) In the suit filed for declaration by the purchasers from Jankabai evidence was given. The husband contested the suit also on the ground that will was executed by Gangabai in his favour in respect of her property. The trial Court has held that the husband failed to prove the execution of will. However, the suit came to be dismissed. The Court considered the circumstance of

the sale of the property of Jankabai during pendency of the suit against the purchasers.

5) The finding given by the trial Court against Dattatraya that he had not proved the will was not challenged by him but the purchasers Sarjabai and Sk. Moin challenged the decision of the trial Court by filing two first appeals. The two appeals filed against the decision of Regular Civil Suit No.249/2005 are decided separately by the District Court and both the appeals are allowed. The first appellate Court has considered the provision of section 15(2)(a) of Hindu Succession Act, 1956 and has held that as property had come to Gangabai from her father's side it was inherited by her and in view of this provision of the Hindu law husband was not entitled to succeed to the property and relatives of the parents were entitled to get the property.

6) Reliance is placed on two cases reported as **2003(4) Mh.L.J. 1 (V. Dandapani Chettiar v. Balasubramanian Chettiar)** and **2010 (5) Mh.L.J. 642 (S.R. Srinivasa v. S. Padmavathamma)**. The Apex Court

has interpreted the aforesaid provision. Facts of the first reported case were similar. This Court has seen the pleadings of the Regular Civil Suit No.172/1991 in which Gangabai had admitted that the property was owned by Dattatraya and it had come to Anantrao, her father. Thus she would have got the property as property inherited from the father, parents side.

7) In view of these circumstances and the aforesaid position of law, this Court holds that no substantial question of law as such is involved in the matter. The first appellate Court has not committed any error in holding that the husband cannot succeed to the property left behind by Gangabai.

8) In the result, both the appeals stand dismissed.

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

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