

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

23 SECOND APPEAL NO. 1755 OF 2005
WITH CA/13125/2005 IN SA/1755/2005

ANNA MADHAVRAO DESHMUKH
VERSUS
KAMALABAI AMBADASRAO DESHMUKH & ORS

...
Advocate for Appellant : Bora Satyajit S.
Advocate for Respondents 1 to 3 : V.D. Salunke
Advocate for Respondent 5D : V.D. Gunale
...

CORAM : T.V. NALAWADE, J.
DATED : 25th April, 2016.

ORDER :

1. The original defendant No. 2 of Special Civil Suit No. 28/1970, which was pending in the Court of Civil Judge, Senior Division, Aurangabad, has filed the present appeal to challenge the judgment and decree of Trial Court and also the judgment and decree of Regular Civil Appeal No. 46/2000, which was decided by the District Court, Aurangabad. The suit filed for partition and separate possession by present respondents - Kamlabai, Alka and Ulka is decided in their favour. Both the sides are heard.

2. One Gajaram was ancestor of plaintiffs and defendants. Gajaram had two sons namely Madhavrao and Vithalrao. Plaintiffs are successors of Madhavrao. It is contended

that after the death of Gajaram, Madhavrao and Vithalrao continued to live in Joint Hindu Family. The properties of Joint Hindu Family are described in Schedule 'A', 'B' and 'C' by the plaintiffs.

3. It is the case of plaintiffs that Ambadasrao was the son of Madhavrao and he was husband of plaintiff No. 1 - Kamalbai. Plaintiff Nos. 2 and 3 are daughters of Ambadasrao born from plaintiff No. 1. Some defendants are successors of Vithalrao. The suit was filed against Madhavrao, father-in-law of plaintiff No. 1 and also against defendant No. 2 - Anna, other son of Madhavrao. It was contended that after the death of Ambadasrao, defendant Nos. 1 and 2, Madhavrao and Anna, drove the plaintiffs out of the house. It is contended that as the properties were ancestral, Ambadasrao was entitled to have equal share with defendant Nos. 1 and 2 and so, they are entitled to take 1/3rd share in the suit properties.

4. Defendant No. 1 - Madhavrao died during the pendency of suit and his legal heirs were brought on the record. Defendant No. 2 did not file written statement. Defendant Nos. 5 and 6, the successors from branch of Vithalrao, filed written statement and they contended that long back, there was

partition between two branches of Madhavrao and Vithalrao. They gave particulars of the partition in the written statement and the shares allotted to the two branches.

5. On the basis of aforesaid pleadings issues were framed. The Courts below have held that the successors of Vithalrao have proved that there was partition between the branches of Madhavrao and Vithalrao. Plaintiffs also admitted that there was partition between these two branches. Plaintiffs then claimed partition of the portion which had come to the share of Madhavrao. Defendant No. 3 was deleted during the course of proceeding as the transaction was made in his favour long back and there was the objection of law of limitation. In the other properties, which had come to the share of Madhavrao, the Courts have held that as the successors of Ambadasrao and also due to the right to get share in the properties of Madhavrao, the plaintiffs are entitled to get total 3/10th share in the properties.

6. It appears that in the order dated 23.9.2009, this Court had expressed that only the point about the right of female heirs to file a suit for partition and separate possession can be considered in view of the provision of section 23 of Hindu Succession Act.

7. It cannot be disputed that due to death of Ambadasrao, his issues had stepped in to shoes of Ambadasrao and they had a right to demand the partition and get the share of Ambadasrao. Due to this position of Hindu Law and as Madhavrao also died during pendency of suit, no point as such is left in the present proceeding. No substantial question of law as such can be formulated in view of the rival contentions and admitted facts. This Court holds that it is not possible to interfere in the decisions given by the Courts below which are concurrent and which are on question of facts. In the result, the appeal stands dismissed. Civil Application disposed of.

[T.V. NALAWADE, J.]

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