

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

SECOND APPEAL NO. 351 OF 2013

Dagubai w/o Supdu Chaudhari
(Mahajan) – deceased through
L.R. Sau. Devkabai Murlidhar Mahajan. **APPELLANT**
[ORI. PLAINTIFF]

V E R S U S

Supdu Tana Choudhari
[deceased] Thr. L.R.
Smt. Shantabai Vithal Patil & Ors. **RESPONDENTS**
[ORI. DEFENDANTS]

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Mr. A.G.Talhar, Advocate for Appellant.
Mr. L.V.Sangit, Advocate for R.Nos. 2 to 4.

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CORAM : T.V.NALAWADE, J.

DATE : 30th MARCH, 2016

ORAL ORDER :-

. The Appeal is filed against the Judgment and Decree of Spl. Civil Suit No. 174/1996 which was pending in the Court of the Joint Civil Judge [Sr. Division], Jalgaon and also against the Judgment and Decree of R.C.A. No. 83/2006 which was pending in the Court of the District Judge - 1, Jalgaon. Both sides are heard.

2. The Suit was filed by present appellant for relief of partition and separate possession and also for relief of declaration that the sale deeds executed by defendant No. 1 in favour of defendant Nos. 3 and 4 are null and void and they are not binding on the plaintiff.

3. Defendant No. 1 is husband of plaintiff No. 1 and is father of plaintiff No. 2. Defendant No. 2 is another daughter of defendant No. 1. Defendant No. 3 is son of defendant No. 2 and defendant No. 4 is the wife of defendant No. 3. It is contended that the plaintiff and defendant Nos. 1 and 2 are members of joint Hindu family.

4. It is the case of the plaintiff that the suit properties were ancestral properties of defendant No. 1 and the plaintiff has 1/4th share in the suit property. It is their case that defendant No. 1 has sold the suit properties to defendant Nos. 3 and 4 to deprive the plaintiff of their rights in the property and there was no legal necessity to sale the property.

5. The defendants contested the matter. They contended that there was no joint family in existence. They contended that the property was sold by defendant No. 1 for legal necessity. During pendency of Suit, plaintiff No. 1 died.

6. On the basis of aforesaid pleadings, issues were framed. Both sides gave evidence. As the suit properties were ancestral properties of defendant No. 1 and relief of partition was claimed by the wife and married daughter, the

Courts below have held that the plaintiff can not get 1/4th share in the suit property as defendant No. 1 had no male issue and so it was his absolute property.

7. The Courts below have considered the position of Hindu Law and aforesaid circumstances. The sale deed was made by defendant No. 1 and he was the absolute owner of the property on the date of sale transaction. As there was no vested right in the property to the plaintiffs, the Courts below have dismissed the Suit. Law is settled on the point involved and it can be said that no substantial question of law is involved in the matter.

8. In the result, Second Appeal stands dismissed. In view of dismissal of the Appeal, C.A. No. 6644 of 2013 also stands disposed of.

[T.V.NALAWADE, J.]