

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

**Second Appeal No. 779 of 2015
With
Second Appeal No.516 of 2016**

- 1) Omprakash s/o Zumbarlal Bedmutha,
Age 55 years,
Occupation : Agri & Business,
R/o Vitthal Mandir, Shahunagar,
Mahaveer Provision Stores,
Navi Bhaji Mandai, Beed.
- 2) Mahaveer s/o Zumbarlal Bedmutha,
Age 45 years,
Occupation : Agri & Business,
R/o Vitthal Mandir, Shahunagar,
Mahaveer Provision Stores,
Navi Bhaji Mandai, Beed.
- 3) Rajendra s/o Zumbarlal Bedmutha,
Age 43 years,
Occupation : Agri & Business,
R/o Vitthal Mandir, Shahunagar,
Mahaveer Provision Stores,
Navi Bhaji Mandai, Beed.
- 4) Vardhaman s/o Zumbarlal Bedmutha,
Age 35 years,
Occupation : Agri & Business,
R/o Vitthal Mandir, Shahunagar,
Mahaveer Provision Stores,
Navi Bhaji Mandai, Beed. .. **Appellants.**

Versus

- 1) Nandabai w/o Kevalchand Kankariya,
Age 50 years,
Occupation : Nil
R/o Dattamandir Galli, Beed.

- 2) Parmeshwar s/o Babasaheb Shinde,
Age 42 years,
Occupation : Agriculture,
R/o Kukkadgaon,
Taluka and District Beed.
- 3) Dnyaneshwar s/o Babasaheb Shinde,
Age 40 years,
Occupation : Agriculture,
R/o Kukkadgaon,
Taluka and District Beed.
- 4) Gorakh s/o Babasaheb Shinde,
Age 38 years,
Occupation : Agriculture,
R/o Kukkadgaon,
Taluka and District Beed.
- 5) Sachin s/o Bhausahab Shinde,
Age 32 years,
Occupation : Agriculture,
R/o Kukkadgaon,
Taluka and District Beed.
- 6) Parbhu s/o Nivrutti Shinde,
Age 31 years,
Occupation : Agriculture,
R/o Kukkadgaon,
Taluka and District Beed.
- 7) Rameshwar s/o Nivrutti Shinde,
Age 30 years,
Occupation : Agriculture,
R/o Kukkadgaon,
Taluka and District Beed.
- 8) Kanhaiyyalal s/o Motilal Ostwal,
Age 55 years,
Occupation : Business,
R/o Mahaveer Chowk, Beed.

- 9) Kantilal s/o Kanhaiyyalal Ostwal,
Age 28 years,
Occupation : Business.
R/o Mahaveer Chowk, Beed.
- 10) Pankavar w/o Zumbarlal Bedmutha,
Age 72 years,
Occupation : Nil,
R/o Vitthal Mandir, Shahunagar,
Mahaveer Provision Stores,
Navi Bhaji Mandai, Beed.
- 11) Sushilabai w/o Asaramji Khabiya,
Age 57 years,
Occupation : Agriculture,
R/o Vitthal Mandir, Shahunagar,
Mahaveer Provision Stores,
Navi Bhaji Mandai, Beed.
- 12) Mandabai w/o Nandlal Nahar,
Age 47 years,
Occupation : Nil,
R/o Chaklamba, Taluka Georai,
District Beed.
- 13) Surekha w/o Santosh Solunke,
Age 37 years,
Occupation : Nil,
R/o Station Road, Baramati,
District Pune.
- 14) Pushpa w/o Pravinkumar Tated,
Age 32 years,
Occupation : Nil,
R/o Takalwadi Road, Barshi,
District Solapur.
- ... Respondents.**

Shri. Milind M. Patil (Beedkar), Advocate, for appellants.

Shri. C.V. Thombre, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 29 JULY 2016

JUDGMENT:

1) The appeals are admitted. By consent heard both the sides for final disposal. The appeals were admitted on the following substantial question of law :

Whether the Courts below have committed error in giving more share to the plaintiff than the entitlement of plaintiff as per the provisions of the Hindu law ?

2) Respondent No.1, Nandabai, had filed Regular Civil Suit No.124/2007 for relief of partition and giving her share in her possession. The suit was filed in respect of six properties like Gat Nos.197, 198, 210, 221 and also Gat Nos.139 and 222. It is the case of Nandabai that these agricultural lands and one house property were ancestral properties of her father Zumbarlal. It is her case that after death of Zumbarlal, names of sons of Zumbarlal were entered in the revenue record as successors but their names were entered for joint Hindu family and defendant

No.1 was Karta of the joint Hindu family. Four sons of Zumbarlal, defendant Nos.1 to 4, and 4 other daughters of Zumbarlal. were made party to the suit. The purchasers from defendants viz defendants Nos.10 to 13 were made parties as share was claimed in the properties purchased by them also. As against them it is the contention of the plaintiff that there was no legal necessity for selling the properties viz. land Block Nos.197 and 198 to defendant Nos.10 to 13.

3) The brothers and sisters of the plaintiff filed joint written statement. They contended that lands Gat Nos.139 and 122 cannot be considered for partition. They contended that land Gat No.139 is self acquired property of defendant No.1 and the land Gat No.222 was alienated by Zumbarlal. himself in the year 1997. They contended that the purchaser of land Gat No.222 was not made party to the suit and the suit was bad for non joinder of necessary party. They contended that the sisters, defendant Nos.6 to 9 had relinquished their share in the properties in favour of the brothers.

4) Other defendants did not appear in the suit and *ex parte* order was made against them. Issues were framed on the basis of aforesaid pleadings.

5) The trial Court held that property bearing Gat / Block Nos.138, 210 and 221 and House No.148 were ancestral properties of Zumbarlal and the plaintiff is entitled to get share in those properties. 1/50th share was given to the plaintiff after considering notional partition.

6) First appellate Court decided the appeals filed by both the plaintiff and defendants against the aforesaid decision given by the trial Court. Both the appeals were partly allowed. The first appellate Court held that the plaintiff was entitled to get equal share along with brothers except in the two properties like Gat No.222 and 139 (by mistake in operative order Gat No.220 is mentioned in stead of mentioning Gat No.222). The first appellate Court held that the purchasers of land Gat Nos.197 and 198 from defendant Nos.1 to 4 are entitled protection and so in partition these properties sold to defendant Nos.10 to 13 are to be allotted to the share of

defendant Nos.1 to 4. Thus, relief of partition is given in respect of 4 agricultural lands and one house property. 1/10th share is given by the first appellate Court to the plaintiff and similar share is given to other issues of Zumbarlal.

7) The learned counsel for the appellants placed reliance on interpretation of provision of Section 6 of the Hindu Succession Act as amended in the year 2005 made by the Apex Court in the case reported as **2016(1) Mh.L.J. 1 (Prakash v. Phulavati)**. In this case the Apex Court has laid down that the amended provisions cannot be given retrospective effect. Admittedly, in the present matter plaintiff was given in marriage prior to 1994 and so as per the old Hindu law, prevailing due to Hindu Succession Act, 1956, first notional partition could have been effected and then share could have given to the plaintiff in the share allotted to Zumbarlal in notional partition.

8) Zumbarlal. was having four sons and wife. The wife is still there as party defendant. In notional partition, Zumbarlal, his four sons and wife would get equal share

i.e. 1/6th share. This 1/6th share of Zumbarlal needs to be distributed amongst his four sons, four daughters and the widow. Thus, the plaintiff would get 1/54th share ($1/6 \times 1/9$).

9) In view of the aforesaid discussion this Court holds that the declaration of the share made by the first appellate Court and also by the trial Court needs to be modified for making the share of the plaintiff as 1/54th. Similarly correction needs to be made to see that the operative order of the District court is corrected. So, the point is answered accordingly.

10) In the result, Second Appeal No.779/2015 is allowed. The decree of the first appellate Court is modified in following terms:-

(A) The suit of the plaintiff is partly decreed. The plaintiff is entitled to get 1/54th share in the aforesaid four agricultural lands (Gat No.197, 198, 210 and 221) and in the house property. The remaining part of the decree given by the first appellate Court to remain as it is.

In the judgment and decree of the first appellate Court in operative order in stead of reading property which is not to be partitioned is to be corrected to make it 222 in place of 220.

11) Second Appeal No.516/2016 filed against the judgment and decree of District Court given in Regular Civil Appeal No.72/2010 filed by the original plaintiff is allowed in terms in which Second Appeal No.779/2015 is allowed. Decree is to be prepared accordingly in both these appeals.

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

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