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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.560 OF 2011

Navnath s/o Baburao Dighe
Age - 38 years, Occ - Agriculture
R/o Jorve, Taluka - Sangamner,
District - Ahmednagar

APPELLANT

VERSUS

1. Dattu s/o Dada Dighe
(Deceased Through LRs
i.e. respondent No.2)
2. Ganpat Dattu Dighe
Age - 50 years, Occ - Agriculture
3. Anjanabai w/o Baburao Dighe
Age - 76 years, Occ - Agriculture
4. Meerabai w/o Baburao Dighe
Age - 56 years, Occ - Agriculture
All r/o Jorve, Taluka - Sangamner
District - Ahmednagar
5. Vanita w/o Ramesh Mate
Age - 43 years, Occ - Household
R/o Nighog, Taluka - Kopergaon,
District - Ahmednagar
6. Chairman, Vividh Karyakari Sahakari
Society Maryadit, Jorve,
Taluka - Sangamner
District - Ahmednagar
7. Rehabilitation Officer,
Ahmednagar
8. Ramnath s/o Baburao Dighe
Age - 35 years, Occ - Agriculture
R/o Jorve, Taluka - Sangamner
District - Ahmednagar

RESPONDENTS

.....
Mr. A. N. Nagargoje, Advocate for the appellant
Mr. A. S. Bajaj, Advocate for respondent No.2
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 29th NOVEMBER, 2016

ORAL JUDGMENT :

1. Heard learned advocates for the appearing parties.
2. It is the case of appellant and respondent No.8 - plaintiffs in Special Civil Suit No.49 of 1995 that properties left behind by one Bhagwant had not undergone any partition and as such, had instituted the suit for injunction, declaration and separate possession in respect of the properties left behind by said Bhagwant.
3. It appears that about four pieces of lands were left behind by deceased Bhagwant to his two sons - Dada and Baburao. Dada, being elder of the two, lands were initially being shown in his name and subsequently in the name of his elder son.
4. Baburao, it appears, had married three persons. His first wife was Anjanabai, second Ratanbai and the third was Meerabai. Appellant and respondent No.8 are progeny of relationship between Baburao and Meerabai. It appears that a

daughter had been begotten to Baburao from Ratanbai.

5. According to the plaintiffs i.e. appellant and respondent No.8, upon attaining majority, they have instituted proceedings, since unpartitioned lands were being dealt with by the defendants giving rise to cause of action for them.

6. In defence, the respondents - defendants had brought certain events to the fore, namely, proceedings between Anjanabai and Dattu for declaration of ownership and possession with reference to an earlier partition. The suit, it appears, had been amicably settled in terms of compromise. Pursuant thereto, revenue record had also been mutated, further taking into account partition between Anjanabai and Meerabai in respect of lands of share of Baburao in ancestral properties.

7. Mr. Nagargoje, learned advocate contends that although it is being considered that partition had taken place, shares in accordance with law have not come the way of the plaintiffs. According to him, the plaintiffs being coparceners, they were entitled to equal share as that of Baburao in the ancestral property, being male progeny in the hierarchy. He submits that in contrast, half of the ancestral property has gone in favour of Anjanabai, which is not compatible with relevant inheritance and

succession laws. Learned advocate, therefore, submits that both the courts have failed to take into account gamut involved in the matter and have erroneously dismissed the claim regarding separate possession and declaration.

8. Countering aforesaid submissions, Mr. Bajaj, learned advocate appearing for defendant No.2 points out that marriage between deceased Baburao and Meerabai cannot be termed as validly recognized marriage in law and progeny of said relationship is not legitimate. As such, even applying un-codified *Shastric* or codified law, shares, which have been allotted to the parties to the suit, cannot be faulted with. He submits that the property coming to the branch of Baburao would be required to be divided between him and his wife by applying theory of notional partition, and Anjanabai legitimately would succeed to the half of the share. It is Baburao's half share which would once again undergo division in equal shares among other descendants. But in the present case, as a matter of fact, a larger chunk of land has gone to the share of plaintiffs and Meerabai. In the circumstances, on all probabilities further prosecution may prove detrimental to the interest of the plaintiff and Meerabai.

9. After hearing learned advocates and upon perusal of the judgments it appears around 1994, Anjanabai had executed a sale deed in respect of land bearing gut No.449/2 in favour of defendant No.2 - respondent No.2 - Ganpat Dattu, who happens to be nephew of Anjanabai. Proceeds thereof are stated to have been appropriated by Anjanabai and daughter of Baburao from Ratanbai. It also occurs that Meerabai had been placed in possession of land bearing gut No.505/2. According to learned advocate Mr. Bajaj, area of land gut No.505/2 has been larger than area of land gut No.449/2. It further appears that Meerabai had been enjoying the property in her possession and had been reaping benefits and produce therefrom was being recorded in the name of Meerabai.

10. Both the courts have taken stock of the situation and had framed relevant issues, scanned evidence on record and had partially decreed the suit to the extent of injunction and dismissed the same for declaration and separate possession. The appellate court also framed similar points as were the issues and had re-scanned the evidence and concurred with the findings given by the trial court.

11. Both the courts have taken into account facts and

circumstances and prevailing legal position and have found that more than sufficient documentary and oral evidence has been adduced on behalf of the defendants in support of their case. Appreciation does not appear to be not in consonance with the evidence. It is not the case wherein it can be said that the decisions rendered tend to be perverse. As such, it does not appear that the second appeal gives rise to any substantial question of law, as sought to be pressed into service on behalf of the appellant.

12. Second appeal, as such, stands dismissed.

13. In view of dismissal of the second appeal, civil application No.13218 of 2011 does not survive and accordingly stands dispose of.

[SUNIL P. DESHMUKH, J.]