

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

SECOND APPEAL NO. 55 OF 2015

Kumbhakarn s/o Dhula Mate **APPELLANT**

V E R S U S

Bai w/o Kumbhakarn Mate
& Ors. **RESPONDENTS**

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Mr. K.K.Kulkarni, Advocate for Appellant.

Mr. S.N.Patne, Advocate for R.Nos. 1 to 3, 4, 6.

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CORAM : T.V.NALAWADE, J.

DATE : 6th APRIL, 2016

ORAL ORDER :-

. The Appeal is filed against the Judgment and Decree of R.C.S. No. 31/2002 which was pending in the Court of the Civil Judge [Jr. Division], Tuljapur, district Osmanabad and also against the Judgment and Decree of R.C.A. No. 154/2011 which was pending in the Court of the District Judge -1, Osmanabad. The Suit filed by present respondent Nos. 1 to 3 for relief of partition and separate possession is decided in their favour. Both sides are heard.

2. The Suit was filed in respect of agricultural

lands viz. Block No. 262 admeasuring 2 H. 25 R., Block No. 204 admeasuring 6 H. 35 R. both situated at village Dahiwadi, Tahsil Tuljapur, Block No. 340 admeasuring 46 R., Block No. 344 admeasuring 3 R., Block No. 352 admeasuring 53 R. and Block No. 459 admeasuring 53 R. including 1/4th share in common well situated in other land from village Savangi and also in respect of house properties bearing Nos. 51/B and 52/K situated at village Pangardharwadi, Tahsil Tuljapur.

3. It is the case of plaintiffs that plaintiff No. 1 is the wife of defendant No. 1 and plaintiff Nos. 2 and 3 are daughters of defendant No. 1. The Suit was filed in the year 2002, after coming into force of the amendment to the Hindu Succession Act made by Maharashtra State Govt.

4. It is the case of plaintiffs that all the aforesaid properties are ancestral properties of defendant No. 1 and so plaintiff Nos. 2 and 3, daughters of defendant No. 1 are entitled to claim share by way of partition in the suit property. It is contended that since 1995, defendant No. 1 neglected to maintain plaintiffs and as he refused to give separate share, cause of action took place for the Suit. It was also contended that defendant No. 1 sold land Block No. 459 under sale deed to defendant No. 3. Defendant No. 3 was added in the Suit due to this transaction.

5. Defendant No. 1 contested the Suit by filing

Written Statement. He admitted the relationship. He denied that the properties are ancestral and joint family properties of plaintiffs and defendant No. 1. The purchaser contended that the suit property land Block No. 459 was sold to him by defendant No. 1 under sale deed dated 14/08/2003 and so his interest and right needs to be protected.

6. On the basis of the aforesaid pleadings, issues were framed. Both sides gave evidence. It appears that as plaintiffs and defendant No. 1 agreed to see that the interest of defendant No. 3, the purchaser, is protected, no relief is claimed in respect of Block No. 459 in the Suit filed by the plaintiffs.

7. Strange defence was taken by defendant No. 1 in evidence that the properties were owned by his father and he had gifted the properties to him by oral gift. As there is no record of such nature and by oral gift, the father could not have given the properties to defendant No. 1 and further during evidence, defendant No. 1 gave admission that the properties had come to his share during partition with his father, both the Courts below have held that the properties in the hands of defendant No. 1 are his ancestral properties.

8. Learned counsel for the appellant/defendant No. 1 submitted that the properties were in the hands of defendant No. 1, who was the sole co-parcener as per the provisions of Hindu Law and so they are his absolute

properties and only after his death, the issues can succeed to the properties. This submission is not all acceptable. In view of the amendment effected to the Hindu Succession Act by the State Govt. from 1994, the daughters are given all the rights of co-parcener in Maharashtra State. They are unmarried and so there was virtually no defence with the defendant No. 1. In view of the provisions of the Hindu Law and the entitlement of the daughters and wife to get share at the time of partition, the trial Court has given shares to the plaintiffs and defendant Nos. 1,2 and 4. The extent of share is not disputed by defendant No. 1/appellant. The finding given is on question of fact and it is concurrent finding. This Court holds that it is not possible to interfere in the decision of the trial Court which is confirmed by the first appellate Court.

9. In the result, Second Appeal stands dismissed. In view of dismissal of Appeal, C.A. No. 1967 of 2015 also stands disposed of.

[T.V.NALAWADE, J.]