

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

903 SECOND APPEAL NO. 307 OF 2013

**TANYABAI GANGADHAR @ GANGARAM
MUSALE AND ORS.**

VERSUS

**KONDABAI GOPAL BANDE,
DIED THR. L.RS. VENKAT GOPAL
AND ORS.**

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Mr. R.B.Deshmukh, Advocate for Appellants.

Mr. N.G.Kale, Advocate for R – 1.

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CORAM : T.V.NALAWADE, J.

DATE : 11th AUGUST, 2016

ORDER :-

. The Appeal is filed to challenge the Judgment and Decree of Spl. Civil Suit No. 5/2002 which was pending in the Court of the Ad-hoc Additional District Judge, Udgir and also to challenge the Judgment and Decree of R.C.A. No. 39/2005 which was pending in the Court of the District Judge 1, Udgir. Heard both sides.

2. The Suit was filed by respondent Kondabai w/o Gopal Bande for relief of partition and separate possession and it was in respect of one agricultural land G.No. 60 and 3 house properties [House Nos. 611/1,778 and 779].

3. The plaintiff is sister of deceased Gangadhar. Defendant Nos. 1 and 5 are widows of Gangadhar and other defendants are issues of Gangadhar. One Hulaji was father of Gangadhar. It is the case of plaintiff that the suit properties were ancestral properties of Hulaji and he died in the year 1970. Gangadhar died in the year 1972. It is her case that after the death of Hulaji, her name was entered in the revenue record as successor of Hulaji, but defendants were refusing to partition the suit properties and give her share.

4. Defendant Nos. 3 and 4 filed Written Statement and defendant Nos. 1,2 and 5 filed separate Written Statement. Both denied the relationship of plaintiff with the defendants.

5. The defendants contended that after the death of Hulaji, plaintiff had applied to enter her name in the revenue record and so her name was entered, but she is not successor

of Hulaji.

6. Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. The trial Court held that plaintiff is successor of Hulaji and she is entitled to get 1/4th share in the suit property. The first appellate Court has confirmed the findings of the trial Court.

7. In addition to the oral evidence, there are circumstances like entries in the revenue record and admission of defendant No. 2 in Written Statement filed in previous Suit about the relationship with the plaintiff. It appears that in the past, this relationship was admitted. Learned counsel for the appellants submitted that the Written Statement ought to have been confronted to defendant No. 2 and as it was not confronted, the so called admission can not be used against defendant No. 2 and other defendants. His contention is not at all acceptable. The plaint of the said Suit [R.C.S.No. 455/2001] filed by defendant No. 2 was produced on record in which defendant No. 2 had given pedigree and he had admitted that present plaintiff is the daughter of Hulaji. The Courts below have considered the circumstances that after the death of Hulaji, name of plaintiff was entered in

the revenue record and this mutation was not challenged. It appears that the aforesaid Suit filed in the past by defendant No. 2 was also decreed on the basis of the contentions made by him. Thus, there was no other alternative than to hold that the plaintiff is the daughter of Hulaji and she is entitled to have share in the property of Hulaji.

8. Learned counsel for the appellants placed reliance on 2 cases reported as 1961 SCR (3) – 792 [Kashinathsa Yamosa Kabadi, etc. Vs. Narsingsa Bhaskarsa Kabadi, etc.] and decision given by this Court [other Hon'ble Judge] in W.P. No. 2000 of 2013 [Shivram s/o Narayan Gatkul & Ors. Vs. Sou. Vrundavani w/o Gautam Khaire & Ors.] dated 22/03/2016.

9. The facts and circumstances of each and every case are always different. On the basis of the observations made in the cases, learned counsel for the appellants submitted that some properties which could have been considered for partition, were not included in the Suit and the Suit was bad for non inclusion of those properties. The submission made shows that those properties are allegedly with the defendants. In view of the circumstances and as no

relief is claimed in respect of those properties, the relief is given only in respect of the properties which are alleged to be ancestral properties.

10. One more point was argued and learned counsel for the appellants submitted that the defendants had virtually ousted the plaintiff from the suit properties and as Gangadhar died in the year 1972, the Suit was not within limitation. This submission is also not acceptable. The parties are Hindus and the possession of defendants was for the plaintiff also and they can not claim that their possession was adverse to the plaintiff. Thus, no substantial question of law as such is involved in the matter.

11. In the result, Second Appeal stands dismissed.

[T.V.NALAWADE, J.]