

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 467 OF 2015

Shri Ramchandra Dattu Mane & Anr. ... Appellants
Vs
Shri Arun Sakharam Bawache & Ors ... Respondents
...
Mr. V. S. Gokhale for the appellant.
None for the respondents.

CORAM : N. M. Jamdar, J.
DATE : 25 APRIL, 2016

P.C. :

1 The Appellants challenges the Judgment and decree passed by the Civil Judge, Junior Division, Kagal and the judgment and order passed by the District Judge, Kolhapur dismissing the Suit and the Appeal filed by the Appellants.

2 The suit was filed for partition of the property. During the pendency of the suit the original Defendant No.1 Sakharam executed a sale deed on 30.12.1997 in favour of the Appellant No. 2. The Respondent – Plaintiff amended the plaint and incorporated a challenge to the sale deed. The Appellant No. 2 appeared in the suit and contended that the Appellant No. 2 was the legally wedded wife of Defendant No. 2 Sakharam and she is entitled to partition of the property, for which she was ready to pay the necessary stamp duty. It was also contended by her that the sale deed executed by

Sakharam in her favour was legal and valid. Both the courts rendered concurrent findings that the Appellant No. 2 was not the legally wedded wife and no adequate compensation was paid neither there was any legal necessity for the sale deed.

3 The learned counsel for the Appellant submitted that as regard the finding of the marital status of the Appellant No. 2 there was no issue framed by the trial court and therefore such finding could not have been rendered. This submission cannot be accepted. Though it is true that the issue was not framed, it is not on record that either of the parties called upon the court to frame the issue. As far as resultant prejudice to the appellants is concerned there is none. Both the courts have discussed the aspect of marital status of Appellant No. 2 in detail. Admittedly the so called marriage of Appellant no. 2 with Sakharam was after the marriage of Sakharam with Respondent no.2 - Vilasi. It was the case of the Appellant No.2 that Sakharam had taken customary divorce from Respondent No. 2 – Vilasi. Both the courts have rendered finding of fact that there was no such customary divorce and no divorce as per the provisions of Hindu Law took place. Therefore a finding of fact is rendered that the Appellant No. 2 is not the legally wedded wife.

4 As regards the sale deed a concurrent finding is recorded that there was no consideration nor there was any legal necessity to execute the sale deed by deceased Sakharam. Both these questions

arises from purely factual adjudication and the courts below have not committed any perversity while evaluating the evidence. No question of law arises.

5 Second Appeal is accordingly dismissed.

(N. M. Jamdar, J.)