

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 146 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 283 OF 2015

1. Balasaheb Shahajirao Jahagirdar,
2. Shankar Shahajirao Jahagirdar,
3. Sou. Alka Shankar Jahagirdar,
All residents of -
Chikkehalli, Tal. Akkalkot, Dist. Solapur. ... Appellants/Applicants

v/s

1. Sou.Nirmala Balasaheb Jahagirdar,
2. Kumari Gayatri Balasaheb Jahagirdar,
3. Sou.Vimal Annasaheb Nimbalkar,
All residents of -
Chikkehalli, Tal. Akkalkot, Dist. Solapur. ... Respondents

Mr.A.B.Tajane for the appellants/applicants.

Mr.Surel Shah for respondent No.1.

Coram: N.M. Jamdar, J.

Dated: 26 April 2016

ORAL ORDER:

The Appellants challenge the concurrent judgments and decree passed by the Civil Judge, Senior Division, Solapur, and the District Judge,

Solapur, decreeing the suit filed by the Respondents and dismissing the appeal filed by the Appellants.

2 Appellant No.1 is the husband of Respondent No.1. Respondent No.2 is their daughter. Appellant No.2 is the brother of Appellant No.1 and Appellant No.3 is the wife of Appellant No.2. Respondent No.3 is a stranger to the family.

3 The marriage between the Appellant No.1 and Respondent No.1 took place on 29 August 1999. Thereafter certain disputes arose between the Appellant No.1 and Respondent No.1 and Respondent No.1 was constrained to reside in her parent's house. On 27 October 1999, Appellant No.1 executed a sale deed in favour of his brother, Appellant No.2 in respect of some of the suit properties. On 29 November 1994, he executed sale deed in respect of some of the suit properties in favour of Appellant Nos.2 and 3. Plaintiff No.2 was conceived in the month of October 1999 and she was born on 1 June 2000.

4 A Civil Suit No.289 of 2002 was filed by the Appellants challenging the sale deed being against the rights of the minor Respondent No.2 and that the properties being joint family properties, there was no legal necessity for selling the properties. Before the Trial Court the Appellants filed their written statement and took up various contentions. One of the main contentions raised was regarding the birth date of Respondent No.2. The learned Civil Judge considered the evidence on record, especially, the record maintained by the municipal authorities. Considering the deposition of the witnesses, learned Civil Judge concluded

that Respondent No.2 was born on 1 June 2000 and Appellant No.1, the father, had not placed any other date on record, neither proved the same. Accordingly, by judgment and decree dated 31 December 2008, the learned Civil Judge decreed the suit and granted $\frac{1}{4}$ share to Respondent Nos.1 and 2 in the suit property. The appeal filed by the Appellants to the District Court was dismissed by judgment and order dated 22 July 2014.

5 I have heard learned counsel for the parties.

6 Learned counsel submitted that the Respondents-Plaintiffs have improved their version in the evidence. He submitted that the birth certificate and the extract was produced a day before the judgment was rendered and the Appellants had no opportunity to cross-examine the parties. He submitted that the procedure under the Registration of Births and Deaths Act, 1969, more particularly, Sections 8 to 15, has not been followed by the Respondent-Plaintiffs and no evidence to that effect has been placed on record. It was also submitted that none of the authorities or any person from the municipal council was examined and the application for registration of birth was given by the brother of Respondent No.1-Plaintiff without following the procedure laid down under the Registration of Births and Deaths Act, 1969. He submitted that the birth certificate has a different surname. Learned counsel submitted that there is complete failure to prove that Respondent No.2 was borne on 1 June 2000 and, therefore, the sale deed which was executed in favour of Appellant Nos.2 and 3 were valid and both the Courts have erred in coming to the conclusion that they were not valid.

7 Learned counsel for the Respondents supported the decision and submitted that the Appellants did not produce any cogent contrary evidence to establish that there is any other date. He also submitted that the argument advanced in this Court were not advanced before the Appellate Court.

8 Appellant No.1 has admitted in his evidence that Respondent No.1 is his wife and Respondent No.2 is his daughter. Appellant No.1, father, has made no efforts whatsoever to make necessary entries in the registration of birth of his own daughter. The reason given is that Respondent No.1 was staying with her parents but that by itself is not a sufficient reason. Therefore, there is a complete absence on the part of Appellant No.1 to place on record the exact date of birth of his own daughter. The evidence has been led by Respondent No.1, mother, which is supported by the public document, such as, relevant extract from the municipal authority. There is no error whatsoever committed by both the Courts in relying on the version of the mother, Respondent No.1 as to when Respondent No.2 was conceived.

9 The argument that there is a breach of the provisions of the Act does not find any reference in the appeal memo filed before the first appellate Court. Learned counsel for the Respondents has pointed out from the roznama that all the documents were produced before the Trial Court and they were only exhibited after the arguments were over and at the time of accepting the Appellants took no objection. The Courts below therefore have rightly relied upon the documents so produced. Both the Courts have also relied upon the oral evidence of the witnesses. The date on

which Respondent No.2 was conceived is a pure finding of fact. The Appellants have only sought to advance technical pleas as to how the date given by Respondent no.1 is incorrect, without offering any cogent material. The Appellant No.1 is not a stranger.

10 Once the finding of fact that Respondent No.2 was born on 1 June 2000 is confirmed, then the conclusion that the sale deeds were in contravention of the rights of Respondent No.2 will follow. As far as legal necessity, nothing is placed on record and the learned counsel for the Appellants has restricted his argument regarding the date of birth of Respondent No.2 which I have dealt as above.

11 The manner in which the litigation is pursued is most regrettable. For the lust for properties, Appellant No.1 has gone to extent of questioning the paternity of the child as well as her birth date. He has created sale deeds in favour of his brother and sister-in-law only to defeat the right of the Appellants and has dragged Respondent Nos.1 and 2 to this court in second appeal. Therefore, it will be appropriate that costs are imposed on the Appellants.

12 Accordingly, the appeal is dismissed with costs quantified at Rs.25,000/- to be paid by the Appellants to Respondent No.1 within a period of four weeks from today, failing which they will be recoverable as arrears of land revenue.

13 At this stage, learned counsel for the Appellants requests that the statement made by the learned counsel for the Respondents that they will

not take actual possession of the property from the Appellants be continued. Learned counsel for the Respondents states that he will continue the statement for six weeks from today. This statement is accepted. The Appellants will continue to pay the maintenance amount and pay the costs as directed.

14 In view of disposal of the second appeal, the civil application does not survive and is disposed of.

(N. M. JAMDAR, J.)