

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.364 OF 2015
WITH
CIVIL APPLICATION NO.472 OF 2015**

Sau.Kamal Tukaram Gawade & Ors. .. Appellants
(Original Plaintiffs)

Vs.

Shri Gyaneshwar Keru Ghule & Ors. .. Respondents
(Original Defendants)

Mr.Girish Godbole a/w. Mr.Parag Tilak i/b. Ms.Sanjukta Dey for Appellants.
Mr.N.V.Walawalkar, Senior Advocate i/b. M/s.Abhijeet Desai for Respondent nos. 1 and 3.
Mr.S.B.Deshmukh for Respondent no. 6.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : FEBRUARY 9, 2016.

P.C.:

1. This Appeal is directed against order dated 15th November, 2016 passed by the learned 2nd Jt.Civil Judge Senior Division, Pune, rejecting the application at the below Exh. 124 in Special Civil Suit No.948 of 2014 seeking relief against Respondent nos. 1 to 9 that they should not create any third party right and should not dispose of the suit property.
2. The Appellants are three real sisters of respondent nos. 1, 2 and 3 brothers. Respondent no. 6 is a purchaser of the suit property. Respondent nos. 8 and 9 are subsequent purchasers from respondent

no.6. Appellants and respondents no. 1, 2 and 3 are the children of one Mr Keru Genu Ghule and Mrs Yamuna Ghule. The family owned ancestral property which is the suit property. In the said property the appellant nos. 1, 2 and 3 claimed their right. It is the case of respondent nos. 1, 2 and 3 that Mr.Keru Genu Ghule, father of the appellants and respondent nos. 1, 2 and 3 made application dated 17.3.1983 under section 85 of the Land Revenue Code to Tahsildar Haveli District Pune for partition and by order dated 13th April, 1983 the Tahisildar recorded statement of their father Mr.Kherba and partitioned the suit property between Mr.Kherba and Mrs. Yamuna Ghule and three sons, that is respondent nos. 1, 2 and 3.

3. At the relevant time, appellants gave consent to the partition and therefore the appellant – original plaintiff has no case to demand partition. The learned 2nd Joint Civil Judge Senior Division rejected the said application

4. I have heard the Counsel for both the parties. The land is admittedly an ancestral property and therefore, in the year 1983 a married daughter did not have any right. They were not co-parceners and therefore they did not have independent right to demand partition. It appears that before the trial Court, the application was argued by

taking on the basis of section 6 of the Indian Succession Act and the Amendment Act of 2005.

5. In the year 1983, a married woman had no right of partition in the ancestral property so appellants do not have any right to demand partition. However, after going through the order dated 13th April, 1983 it was found that the ancestral land was partitioned in 5 portions between three sons and father and mother. The married daughter has right in the property in the share of the father and mother after their death. Thus, after their death, their daughters i.e., the appellants and respondents have equal shares in the property.

6. It is submitted by learned Counsel for the appellant that Mr.Keru Genu Ghule died on 25th April, 1988 and Mrs. Yamunabai Ghule died on 30th August, 2013 and it was submitted that the six children and Yamunabai had each 1/7th right in the property left by Mr.Kherba and six children have 1/6th each of the share in the property of Mrs.Yamunabhai Ghule.

7. Learned Counsel for the respondent nos. 1, 2 and 3 while opposing this application submitted that this point was not raised and the submission made before this court that the appellants have limited

right in the property of parents was never argued before the trial court and the entire arguments were advanced on the basis of section 6 of the Hindu Succession Act, 1956 and Amendment Act of 2005. Under the said circumstances the respondent nos. 1 to 3 should get the opportunity to Counter this argument before the trial court so that, if at all it is decided in favour of the appellants, then they can challenge it by filing appeal.

8. While hearing these submissions, on query, it is informed by the learned Senior Counsel after taking instruction from respondent nos. 1 to 3 that the properties which were allotted to Mr.Kherba and Yamuna in the year 1987 by the Tahsildar are not disposed off till date. The said statement is made at the bar and is accepted so appellants prima facie have ground to argue case of their 1/6th or 1/7th undivided share so the said property is to be protected.

9. Learned Counsel for the appellants submits that the appellants want to move an application in respect of the property falling to the shares of their parents and will seek further orders in respect of this property before the trial Court.

10. In view of this Appeal in Order is disposed off with the following directions:

- i) The respondent nos. 1 to 3 shall not create any third party interest and shall not dispose of or part with the property and create any encumbrance in the said property.
- ii) The appellants are at liberty to file application to seek further orders, if they want.

(MRS.MRIDULA BHATKAR, J.)