

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

**SECOND APPEAL NO.172 OF 2015  
along with  
CIVIL APPLICATION NO.343 OF 2015  
IN  
SECOND APPEAL NO.172 OF 2015**

Tatoba Ganu Gangtade .. Appellant/Applicant

Vs.

Rani Dilip Khade .. Respondent

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Ms.Manjiri Parasnis for the appellant/applicant.

Mr.Kiran C.Shirguppe for the respondent.

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**CORAM : R.D. DHANUKA, J.**

**DATE : 2<sup>nd</sup> March 2016**

P.C.

. By this second appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant) has impugned the order dated 9<sup>th</sup> April 2014 passed by the learned Adhoc District Judge-1, Sangli dismissing the appeal filed by the appellant herein and confirming the decree passed by the learned trial Judge.

2. The respondent herein (original plaintiff) has filed a suit for partition and separate possession of her share in the suit properties situated at village Haripur, Taluka-Miraj, District-Sangli. It was the case of the original plaintiff that she is daughter of the defendant no.1-Tatoba and the defendant no.2-Jayshri. It was the case of the plaintiff that the suit properties are the ancestral properties and she is having 1/3 share in it. The defendant no.1-Tatoba filed a written statement and denied the suit claim. He denied that the plaintiff is his daughter.

3. Learned trial Judge framed seven issues. Both the parties had led evidence before the learned trial Judge. The trial Judge has rendered a finding of fact that the plaintiff was daughter of the appellant herein and Jayshri. The learned trial Judge has held that the suit properties were the ancestral properties in which the original plaintiff was entitled to 1/3 share from the defendant no.1-Tatoba. Upon demise of her mother (original defendant no.2), she and the defendant no.1-Tatoba are entitled to 1/2 share in the suit properties. The said decree was impugned by the original defendant no.1 in the Lower Appellate Court. The Lower Appellate Court has once again rendered a finding of fact in favour of the original plaintiff and has dismissed the appeal.

4. Learned counsel appearing for the appellant (original defendant) submits that onus was on the plaintiff to prove that the suit properties were ancestral properties and not self-acquired properties. In support of her submission, she placed reliance on the judgment of the Supreme Court in the case of ***Srinivas Krishnarao Kango Vs. Narayan Devji Kango & Ors.***, reported in ***AIR 1954 SC 379***. It is submitted that the onus could not have been shifted to the defendant to prove that the suit properties were self-acquired properties.

5. The next submission of the learned counsel is that the Lower Appellate Court ought to have framed fresh issues and ought to have rendered fresh findings of facts which are missing in the order passed by the Lower Appellate Court.

6. Learned counsel appearing for the original plaintiff, on the other hand, invited my attention to the findings recorded by the learned

trial Judge as well as the Lower Appellate Court. He submits that the learned trial Judge on consideration of the oral evidence and the documentary evidence has rightly rendered a finding of fact that the original plaintiff has produced various documents including school leaving certificate in which the name of the appellant herein is shown as her father. During the course of the arguments, it is also brought to notice of the Court that there were proceedings against the appellant in which he admitted that the plaintiff was his daughter.

7. A perusal of the order passed by the learned trial Judge and also the Lower Appellate Court clearly indicates that the original plaintiff was born in the year 1982 and she proved that she is the daughter of the appellant. The appellant himself has admitted that in the maintenance proceedings filed under Section 125 of the Code of Criminal Procedure, 1973 that the plaintiff is his daughter. The Lower Appellate Court also has rendered an independent finding that the plaintiff was born on 15<sup>th</sup> July 1982 and was a coparcener and was entitled to 1/2 share in the suit properties in view of Section 6 of the Hindu Succession (Amendment) Act, 2005.

8. In so far as the submission of the learned counsel for the appellant that the onus could not have been shifted upon the appellant is concerned, the findings of the learned trial Judge as well as the Lower Appellate Court are concurrent findings that the suit property was not self-acquired property but was a joint property. There is thus no substance in the submission of the learned counsel for the appellant.

9. In so far as the second submission of the learned counsel for the appellant that the Lower Appellate Court ought to have framed fresh issues and ought to have rendered fresh findings of facts which are missing in the order passed by the Lower Appellate Court is concerned, a perusal of the order passed by the Lower Appellate Court clearly indicates that the Lower Appellate Court has considered the submission of both the parties which are summarized in various paragraphs in the impugned order and framed points for determination and discussed the same at length in the impugned order and has confirmed the findings of the learned trial Judge. In my view, findings recorded by the Lower Appellate Court are not perverse. There is no substantial question of law arisen in this second appeal. Appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and the same is accordingly dismissed. No order as to costs.

10. Application of the learned counsel for the appellant to continue the ad-interim order is vehemently opposed by the learned counsel for the respondent. Three Courts have already decided against the appellant and have found no substance in the submission of the appellant and thus I am not inclined to continue the ad-interim order. Application of the learned counsel for the appellant for continuation of the ad-interim order is rejected.

***R.D. DHANUKA, J.***