

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.170/2014

with

CIVIL APPLICATION NO.356/2014

(Smt. Suman Laxman Charlekar and others vs. Smt. Janabai w/o Gopal Chawale and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr. R.D.Bhubhar, Advocate for appellants

Mr. V.D. Muley, Advocate for Respondent Nos.1,2,4 and 5

CORAM: A.B.CHAUDHARI, J.

DATED : 24th February, 2016.

Heard learned counsel for the rival parties, at length.

Upon hearing both sides, I frame the following substantial question of law :-

“ Whether with reference to Section 54 of the Bombay Tenancy & Agricultural Lands (Vidarbha Region) Act, the daughters of original tenant - Latari along with son Laxman would succeed to the estate i.e. tenanted property, after the death of Latari? .. **Yes**

What Order : **The Second Appeal is dismissed.**

Learned lower Appellate Court reversed the finding of the learned trial Judge on the question of law raised before it, *qua* Section 54 of the Bombay Tenancy & Agricultural Lands (Vidarbha Region) Act,

1958 on the ground that the son Laxman alone could not claim to be the exclusive owner of the tenanted property after the death of Latari, because after the death of Latari, the daughters would succeed to the estate along with brother Laxman and that is governed by the provisions of the Succession Act, particularly when Section 54 of the Tenancy Act provides for heritable rights. I quote paragraph 12 of the judgment of the lower Appellate Court, as under :-

“12. On the date when Latari Charlekar died he was not the tenant in the suit property, but he has acquired ownership right in the year 1961 itself. In the light of this admitted fact the question of inheritance of tenancy rights does not arise. On the date when Latari Charlekar died he had acquired ownership. It is his self-acquired property and hence as per the provisions of the Hindu Succession Act, his daughter get equal right to that of son in the suit property. Thus, plaintiff, defendant no.1 and defendant no.2 all are equally entitled for ownership right in the suit property. Plaintiff has got 1/3rd undivided share in the agricultural land.”

I am in agreement with the above view; whereas I disagree with the view taken by trial Judge.

The substantial question of law raised above, is answered affirmatively. In the result, I make the following order:-

ORDER:

- 1) Second Appeal No.170/2014 is summarily dismissed.
- 2) The statement made by the respondents on 10.9.2015 shall remain in operation for a period of six weeks from today.
- 3) In view of disposal of main matter, Civil Application(s) No. 356/2014 for stay, does not survive. The same is disposed of.

JUDGE

sahare