

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.2478 OF 2012
IN/WITH
SECOND APPEAL (ST.) NO.5864 OF 2012
WITH
CIVIL APPLICATION NO.2479 OF 2012**

Dadaram s/o Bapu Ghodke,
Age: 59 years, Occu: Agriculture,
R/o Chandgaon, Tq. Shrigonda,
District Ahmednagar

..APPLICANT
(Orig.deft.No.1)

VERSUS

1. Sakharbai w/o Dadaram Ghodke,
Age: 52 years, Occu: Household,
R/o Chandgaon, Tq. Shrigonda,
District Ahmednagar
2. Mahadeo s/o Dadaram Ghokde,
Age: 23 years, Occu: Agriculture,
R/o as above
3. Revubai w/o Bhagchand Rajput,
Age: 49 years, Occu: Household,
R/o Kokangaon, Tq. Shrigonda,
Dist. Ahmednagar
4. Shevubai w/o Baban Bhailume,
Age: 43 years, Occu: Household,
R/o Adhalgaon, Tq. Shrigonda,
Dist. Ahmednagar
5. Thakubai w/o Bapu Ghoke
(deceased)

..RESPONDENT

Mr J. S. Gavane, Advocate for applicant;
N. V. Gaware, Advocate for respondent Nos. 1 & 2

CORAM : N.W. SAMBRE, J.

DATE : 5th July, 2017

ORAL ORDER

(2)

For the reasons disclosed in the application, delay of 58 days caused in preferring Second Appeal stands condoned and Civil Application No.2478 of 2012 stands allowed.

2. This Second Appeal is by original defendant no.1 who suffered a decree for partition and separate possession. The lower appellate court confirmed the said decree. Thus, the present Second Appeal.

3. Mr Gavane, learned Counsel appearing on behalf of the appellant by pressing into service provisions of Section 18 of the Hindu Marriage Act, 1956 would urge that the status of illegitimate child being innocent children is required to be appreciated particularly about his entitlement to the share in ancestral property. He would invite attention of this Court to the judgment of the Apex Court in the matter of **Revansiddappa & anr. vs. Mallikarjun & others**, reported in **2011 (11) SCC 1**. According to him, the right to succession of illegitimate child to the ancestral property in question is an issue which is pending for consideration before the Larger Bench of the Supreme Court. He would also make a submission that when it comes to interpreting Section 16 of the Hindu Marriage Act, the Act in itself is not making any differentiation between self-acquired and ancestral property. According to him, in view thereof, the plea raised by the appellant-defendant praying joining of such children as party defendant to the suit and carving out his share should have been considered by the Courts below.

(3)

4. Learned Counsel appearing on behalf of respondents no.1 and 2 opposed the claim by supporting both judgments on the count that the Courts below having held the property to be ancestral one, have rightly decreed the suit. According to him, the children of the present appellant born out of second marriage during subsistence of his first marriage, in law are not entitled for any share. He, therefore, sought dismissal of the appeal.

5. Having considered rival submissions and an interesting issue is sought to be raised by Mr Gavane, based on the judgment of the Apex Court in the matter of Revansiddappa (supra), while dealing with an issue as regards entitlement of the illegitimate children to have share in the ancestral property, the Apex Court in paragraph 35 of the said judgment has observed thus :-

“In our view, in the case of joint family property such children will be entitled only to a share in their parents' property but they cannot claim it on their own right. Logically, on the partition of an ancestral property, the property falling in the share of the parents of such children is regarded as their self acquired and absolute property. In view of the amendment, we see no reason why such children will have no share in such property since such children are equated under the amended law with legitimate offspring of valid marriage. The only limitation even after the amendment seems to be that during the life time of their parents such children cannot ask for partition but they can exercise this right only after the death of their parents.”

(4)

6. No doubt, the matter is already *sub judice* for consideration before the Larger Bench of the Apex Court, however, the Apex Court, while referring the matter to the Larger Bench in categorical terms has observed that during the life time of parents of the illegitimate child, such child cannot ask for partition and they can exercise such right only after the death of their parents. In the present case, it is not in dispute that the parents of the illegitimate child, namely, appellant and his second wife are very much alive.

7. In the aforesaid background, in my opinion, the substantial question of law as is sought to be raised by Mr Gavane will hardly be of any assistance as such children cannot claim entitlement for share in ancestral property during the life time of his parents. Second Appeal as such lacks merit and stands dismissed.

8. In view of dismissal of second appeal, Civil Application No.2479 of 2012 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

amj