

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

18 CIVIL APPLICATION NO. 10869 OF 2010
IN SAST/21333/2010

YESHWANTRAO NARAYANRAO JADHAV
VERSUS
SOU. KAMALBAI MADHAVRAO MANE AND ORS

...
Advocate for Applicant : Mr. C. R. Deshpande.
...

CORAM : **N. W. SAMBRE, J.**
DATE : 12th June, 2017.

PER COURT:

. None for the non-Applicant No.1. So far as the appeal against other Respondents is concerned, the same is already dismissed against Respondent Nos.2, 5 to 9.

2 In view thereof, the application alongwith appeal is taken for hearing.

3 Heard Mr. Deshpande, learned counsel for the Appellant / Plaintiff. In the background that the appeal is dismissed against some of the Respondents / Defendants and stood abated against some of the Respondents / Defendants, he tried to prevail upon the Court to urge that since original Defendant No.1 is the contesting Respondent in whose shoe the other Defendants have stepped into by purchasing

the property, the appeal can be heard only against Defendant No.1 i.e. Respondent No.1.

4 According to him, the suit property consisting of 2 Acres i.e. 80 Ares of land situated at village Arvi, Taluka Latur Gat No.101, was purchased in the name of Appellant and Respondent No.1. According to him, Respondent No.1 was added as party to the sale-deed being a nominal owner. However, Appellant remained to be in possession of the property. As his title to the suit property was disputed by his real sister / Defendant No.1, he filed Regular Civil Suit No.227 of 1990 in the Court of Joint Civil Judge, Junior Division, Latur praying for declaration of ownership of suit property, perpetual and mandatory injunction.

5 The suit came to be dismissed on March 19, 2005 by the learned Trial Court, which was subject matter of challenge at the behest of Appellant in Regular Civil Appeal No.113 of 2005 in the Court of Ad-hoc District Judge-2, Latur. The Appellate Court declared that the Appellant is entitled to half of the share in the suit property i.e. Gat No.101 admeasuring 2 Acres.

6 Being aggrieved by such finding of the Appellate Court i.e. denying his claim over the entire Gat No.101 to the extent of 80 Ares,

the Appellant has preferred this second appeal.

7 Mr. Deshpande, learned counsel for Appellant has invited the attention of this Court to the development occurred during the pendency of the present proceedings that the property in question to the extent of the share of Defendant No.1 has changed the hands in between Respondent No.2 to Respondent No.9.

8 Against Respondent No.2, the proceedings were dismissed on 16th October, 2015 and 12th February, 2016. So did against Respondent Nos.5, 6, 7 and 8 and against Respondent No.9 on 16th October, 2015 as abated.

9 Admittedly neither steps were taken by the Appellant for bringing the legal heirs of dead Respondents on record nor corrective measures for restoration were taken.

10 In the aforesaid background, Mr. Deshpande, learned counsel for Appellant would try to urge this Court that both the Courts below committed error by not decreeing the suit by granting share to the present Appellant to the extent of 2 Acres (80 Ares land out of Gat No.101 of village Arvi, District Latur).

11 I am afraid of such contentions of the Appellant particularly in the backdrop of dismissal of appeal against other Respondents, who have stepped into the shoe of original Defendant No.1, is liable to be rejected, particularly when Respondents were added as party Defendants to the suit.

12 Apart from above, once the Appellant has admitted relationship between himself and original Defendant No.1 Kamalbai as real brother and sister, the First Appellate Court in the backdrop of the same has appreciated the sale-deed Exhibit 96, which was executed in favour of both i.e. Appellant and Defendant No.1. The evidence of the Plaintiff's witness and other evidence deals certified copy of the sale-deed Exhibit 96 placed in Regular Civil Suit No.1072 of 1987, the suit between Defendant No.1 and one Nagorao to which the Appellant was a party and Regular Civil Suit No.698 of 1988 for declaration and possession etc., written statement and compromise effected between the parties was appreciated. Apart therefrom, the Appellate Court has proceeded to consider the evidence of DW-1, however, in view of the burden that was discharged by the Appellant / Plaintiff has decreed the suit particularly to the extent of half share in Gat No.101.

13 Apart from above referred technicalities of dismissal of the claim against Respondents / non-Applicants, I hardly see any question of law, which prompts interference in the judgment delivered by the Appellate Court as the said judgment is based on the blood relationship and other evidence as is discussed hereinabove. As such, the application alongwith appeal fails. Dismissed.

[N. W. SAMBRE, J.]

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