

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

APPEAL FROM ORDER NO. 68 OF 2015

WITH CA/9476/2015 IN AO/68/2015

- | | | |
|----|---|-------------------|
| 1. | Sou.Kusum w/o Gajanan Deolalikar | |
| 2 | Smt. Jyoti d/o Gajanan
Deolalikar | |
| 3 | Shrikant s/o Gajanan Deolalikar | Appellants |
| | | (Original |
| | All- R/o 418/19, Somvar Peth,
Pune-1 | Plaintiff) |

VERSUS

- | | |
|---|---|
| 1 | Gajanan Murlidhar Deolalikar
(Died, through LRs. i.e.
Appellant Nos. 1 to 3 and
Respondent Nos. 13 & 14) |
| 2 | Ravishankar Murlidhar Deolalikar |
| 3 | Deepak Gajanan Deolaikar
Died, having no heirs. |
| 4 | Surendra Sitaram Varvadkar |
| 5 | Madhu Anna Jangwali
Died-Through LRS. |

5-A) Sau. Lata w/o Dnyaneshwar
Misal

5-B) Sau Asha w/o Vijay Sathe

5-C) Mangal Laxman Bedre
(Deceased, through LRs.

5-C-1) Rahul s/o Laxman Bedre
R/o House No.189/1861/1862
Zendigate, Gawaliwada, CTS
No.1899, Talmicha Wada,
Ahmednagar,

- | | |
|---|---------------------------------|
| 6 | Shaikh Saleemabi Musa Kureshi |
| 7 | Shaikh Iliyas Babubhai Kureshi |
| 8 | Shaikh Maiambi Khalid Kureshi |
| 9 | Shaikh Shakilabai Kadir Kureshi |

- 10 Shaikh Rahim Munnisa Isak Kureshi
- 11 Rajendra Motilal Munot
- 12 Sau Shobha Rajendra Munot
- 13 Sunil Gajanan Deolalikar
- 14 Jagdsh Gajanan Deolalikar
- 15 Vastalabai Pancharinath Mahale
Deceased, through her Legal Heirs.
15-a) Karuna Rajendra Udawant
15-b) Kalpana Kalyan Misal
15-c) Meena Shantaram Pawatekar
- 16 Suresh Sakharam Deolalikar
- 17 Sindhu d/o Murlidhar Deolalikar
Deceased, through her Legal heirs.
17-a) Shobha Suresh Mahale
17-b) Sanjay Mohan Bhadkwan
17-c) Ajay Mohan Bhadkwan
17-d) Dhananjay Mohan Bhadakwan
17-e) Bandu @ Vijay @ Trijay s/o Mohan Bhadakwan
- 18 Sulochana w/o Govind Burhade
(Deleted as per order dated 21.07.2017)
- 19 Ratan w/o Surendra Warvarkar
- 20 Lalita w/o Ashok Nagre
- 21 Anand Omprakash Khandelwal
- 22 The Chairman of Rajiv gandhi Nagri Sah. Patsanstha Ltd.,
Bhistbaug Naka, Pipe line Road, Ahmednagar,
- 23 The Chairman of Bhairavnath Gramin Bigarsheti Sah. Pat Sanstha Ltd., Kedgaon, Tq. Nagar, Dist. Ahmednagar.
- 24 Tukaram Anna Gawale (Jangawali)
- 25 Ganesh Namdeo Gawali(Jangawali)

- 26 Manoj Namdeo Gawali (Jangawali)
27 Santosh Mahadu Gawali .. Respondents
(Jangawali) Died, through his .
legal heirs

27-1)Smt. Rani Santosh Gawali,
27-2)Vishal Santosh Gawali
27-3)Kum. Gavri Santosh Gawali

Mr Kishor C. Sant, Advocate for the appellants.
Mr Prasanna Kutti, Advocate for respondent No.1
Mr Anil S.Bajaj, Advocate for respondent Nos.11 & 12
Mr. Ankush Gade h/for Mr. S. J. Salunke, Advocate
for respondent Nos. 15-A to 15-C

WITH

APPEAL FROM ORDER NO.19 OF 2016

CA/4640/2016 IN AO/19/2016

1. Rajendra Motilal Munot
2 Sau. Shobha Rajendra Munot ... Appellants
R/o Khristgalli, Ahmednagar Original
respondents
11 and 12

VERSUS

- 1 Sou. Kusum w/o Gajanan
Deolalikar
2 Smt. Jyoti d/o Gajanan
Deolalikar
3 Shrikant s/o Gajanan Deolalikar
All- R/o 418/19, Somvar Peth,
Pune-1
4 Gajanan Murlidhar Deolalikar
5 Ravishankar Murlidhar
Deolalikar
6 Surendra Sitaram Varvadkar
7 Madhu Anna Jangwali

- 8 Shaikh Saleemabi Musa Kureshi
- 9 Shaikh Ilyas Babubhai Kureshi
- 10 Shaikh Maiyambi Khalid Kureshi
- 11 Shaikh Shakilabi Kadir Kureshi
- 12 Shaikh Rahim Munnisa Isak
Kureshi
- 13 Sunil Gajanan Deolalikar
- 14 Jagdish Gajanan Deolalikar
- 15 Vastalabai Pandharinath Mahale
Deceased, through her Legal
Heirs.
 - 15-a) Karuna Rajendra Udawant
 - 15-b) Kalpana Kalyan Misal
 - 15-c) Meena Shantaram Pawatekar
- 16 Suresh Sakharam Deolalikar
- 17 Sindhu d/o Murlidhar Deolalikar
Deceased, through her legal
heirs.
 - 17-a) Shobha Suresh Mahale
 - 17-b) Sanjay Mohan Bhadkwan
 - 17-c) Ajay Mohan Bhadkwan
 - 17-d) Dhananjay Mohan Bhadakwan
 - 17-e) Bandu @ Vijay @ Trijay
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- 18 Sulochana w/o Govind Burhade
- 19 Ratan w/o Surendra Warvarkar
- 20 Lalita w/o Ashok Nagre
- 21 Anand Omprakash Khandelwal
- 22 The Chairman of Rajiv gandhi
Nagri Sah. Patsanstha Ltd.,
Bhistbaug Naka, Pipe line Road,
Ahmednagar,
- 23 The Chairman of Bhairavnath
Gramin Bigarsheti Sah. Pat
Sanstha Ltd., Kedgaon, Tq.
Nagar, Dist. Ahmednagar.

- 24 Tukaram Anna Gawale (Jangawali)
25 Ganesh Namdeo Gawali(Jangawali)
26 Manoj Namdeo Gawali (Jangawali)
27 Santosh Mahadu Gawali ... Respondents
(Jangawali) Died, through his
legal heirs

27-1)Smt. Rani Santosh Gawali,

27-2)Vishal Santosh Gawali

27-3)Kum. Gavri Santosh Gawali

Mr. Anil S. Bajaj, Advocate for the appellants,
Mr. K. C. Sant, Advocate for Respondents 1 to 3

CORAM : K. L. WADANE, J.

RESERVED ON : 13.12.2017

PRONOUNCED ON : 19.12.2017

J U D G M E N T:

1. The above referred appeals are arising out of the judgment and order dated 08.06.2015 passed by the District Judge-4, Ahmednagar in Regular Civil Appeal No. 188/2012, by which the judgment and decree of dismissal Regular Civil Suit No. 41/2000, dated 15.03.2003 is set aside and suit is remanded to the trial court for its decision afresh, as per the observations made in the order. (The parties are referred to by their original status).

2. Being aggrieved with the impugned order, original plaintiffs have preferred Appeal from Order

No. 68/2015 contending that the learned District Judge has remanded the suit only to the extent of two properties i.e. CTS Nos. 1469 and 1470 excluding the property bearing CTS No. 1899 and it is prayed that the matter be remanded for its disposal including property CTS No.1899.

3. Original defendant Nos. 12 and 13, purchaser of the property CTS No. 1899 have presented the Appeal from Order No.19/2016 only for clarification that suit is remanded to the extent of two properties i.e. CTS Nos. 1469 and 1470 only.

4. I have heard the arguments of Mr. Sant, the learned counsel appearing for the appellants/plaintiffs and Mr. Bajaj, the learned counsel appearing for appellants/defendant Nos. 12 and 13.

5. On perusal of the record and upon hearing both the sides, it appears that the learned trial court has dismissed the suit for partition and separate possession. The suit was filed by the plaintiffs for partition and separate possession, contending that the suit properties i.e. CTS Nos. 1469, 1469 and 1899 are ancestral properties of

defendant Nos. 1 and 2, Gajanan Murlidhar Deolalikar and Ravishankar Murlidhar Deolalikar respectively and after death of Murlidhar, the plaintiffs are entitled to have their shares in the suit properties.

6. In the trial Court, on behalf of the plaintiffs, Plaintiff No.1 Kusum Deolalikar deposed at Exh.59, one witness Chandrakant Kulthe deposed at Exh.62 and plaintiff No.3 Shrikant Deolalikar at Exh.91. As against this, defendant No.1 Gajanan Deolalikar deposed at Exh.67 and Defendant No.12 Rajendra deposed himself at Exh.77. Besides the oral evidence, the parties have relied on the documentary evidence on record.

7. After considering the evidence on record, the learned trial court has held that the property at CTS No. 1899 is self acquired property of defendant Nos. 1 and 2 and rest of the properties i.e. property Nos. 1469 and 1479 are the ancestral properties of defendant Nos. 1 and 2. Further it is observed by the trial court that the suit is bad for non-joinder of necessary parties. Hence, the suit was dismissed, against which, the plaintiffs

have preferred Regular Civil Appeal before the learned District Judge, Ahmednagar/First Appellate Court. During the pendency of the Regular Civil Appeal, other legal representatives i.e. daughters of deceased Murlidhar were brought on record. In view of the amendment in the Succession Act, daughters are also entitled for share in the properties left by the deceased Murlidhar. Hence, the matter was remanded for re-determination/calculation of shares after including of the female members in the family.

8. The learned trial court has held that the property Nos. 1469 and 1470 are the ancestral properties of Defendant Nos.1 and 2 as they have specifically admitted the same in their written statement. Further, from the record, it appears that the property CTS No. 1899 was sold by the father of defendant Nos. 1 and 2 namely Murlidhar in the year 1957 to one Shankar Dahale. Murlidhar died in the year 1963. Subsequently, in the year, 1973, defendant Nos. 1 and 2 have purchased the same property from Shankar Dahale. Thus, from the record, it appears that the learned trial court has

observed that the property at CTS No. 1899 is self acquired property of defendant Nos.1 and 2. Further, there is no evidence on record that defendant Nos. 1 and 2 have purchased property CTS No.1899 from the nucleus of the jointly family. In the Appeal, the First Appellate Court also observed the same thing.

9. So, looking to the observations of the trial court as well as the First Appellate Court, it appears that the finding as regards self acquired property of defendants Nos. 1 and 2 is concurrent and no contrary evidence is adduced on record. After addition of the female members i.e. daughters of Murlidhar as party respondents, the matter was remanded to the trial court only for re-determination/calculation of shares of the plaintiffs, defendant Nos.1 and 2 added daughters of Murlidhar.

10. Mr. Sant, the learned counsel appearing for the plaintiffs, during the course of argument, has stated that the order remanding the suit only to the extent of two properties is illegal since the property i.e. CTS No. 1899 is also liable to be

partitioned and therefore the matter may be remanded inclusive of the property CTS No. 1899.

11. I do not agree with the submissions of Mr. Sant, simply because the trial Court as well as First appellate court, upon scrutiny of the evidence on record, have held that CTS No. 1899 is self acquired property of defendant Nos.1 and 2 and therefore the same is not liable for partition. Consequently, there is no substance in Appeal From Order No. 68 of 2016.

12. To consider the appeal of defendant Nos. 12 and 13 (purchasers) i.e. Appeal from Order No. 19/2016, it appears that this appeal is presented by them only to the extent of clarification that the suit is remanded only for the purpose of redetermination/calculation of shares in the two properties i.e. CTS Nos. 1469 and 1470 and not in respect of the self acquired property of defendant Nos.1 and 2 i.e. CTS No.1899 from which defendant Nos. 11 and 12 have purchased some part.

13. The First Appellate Court has held that two properties i.e. properties at CTS Nos. 1469 and

1470 are the joint family properties and one i.e. CTS No.1899 is self acquired property of defendant Nos. 1 and 2. However, in the operative part of the impugned judgment and order, Clause 1-(a) reads as follows:

"1-(a)The decree of dismissal of the suit dated 15.03.2003 is set aside and the suit is remanded back to the Trial Court for decision afresh as per the observations made above."

In the reasons recorded in the judgment and order, the First Appellate Court has clearly observed that CTS No. 1899 is a self acquired property of defendants 1 and 2, however, it is ordered by the First Appellate Court that the suit is remanded to the learned Trial Court for its decision afresh as per the observations made in the order, due to which the confusion is created as to whether the matter is remanded only to the extent of two properties or three properties. To that extent, defendant Nos.12 and 13 have preferred this Appeal from Order seeking clarification.

14. Since, the Trial Court as well as First

Appellate Court have clearly held that CTS No. 1899 is a self acquired property of defendant Nos.1 and 2, therefore the question of its partition in the remanded suit will not arise. Hence, with this clarification, the Appeal From Order No. 19/16 is liable to be disposed of. Hence following order:

O R D E R

- i. Appeal from Order No. 68/2015 is dismissed.
- ii. Appeal from Order No. 19/2016 is disposed of with the clarification that the suit is remanded only for partition of CTS Nos. 1469 and 1470.
- iii. In view of disposal of the Appeals from order, pending civil applications also stand disposed of.
- iv. No order as to costs.

(K. L. WADANE, J.)

JPC