

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 19 OF 2016
(Gangadhar s/o Gundappa Aachwale and others Vs. Smt.
Ashwini Somnath Aachwale and another)

Mr. N.P. Patil-Jamalpurkar, Advocate for the petitioners

CORAM : SANGITRAO S. PATIL, J.

DATE : 27th JUNE, 2017

ORAL ORDER :

Heard the learned counsel for the petitioners
(original defendant Nos. 1 to 5).

2. The petitioners challenge the order dated 22nd July, 2015, passed below application (Exh-24) in Regular Civil Suit No. 71 of 2015 by the learned Joint Civil Judge, Junior Division, Latur, whereby the said application came to be rejected.

3. The petitioners had challenged maintainability of the suit merely on the ground that the respondents (original plaintiffs) had no right to institute the suit for partition since they do not come within the definition of "coparcener" for getting benefit of Section 6 of the Hindu Succession Act.

4. The copy of the plaint is produced on record.

Respondent No. 1 is the widow, while respondent No. 2 is the daughter of the deceased Somnath, who was the son of petitioner Nos. 1 and 4. Petitioner Nos. 2 and 3 are the brothers, while petitioner No. 5 is the sister of the deceased Somnath. Somnath died on 26th September, 2013, leaving behind him the respondents. Respondent No. 2, the daughter of the deceased Somnath was born on 28th November, 2012. The respondents sought partition of the coparcenary property claiming 1/5th share through the deceased Somnath. According to the petitioners, the plaint is liable to be rejected since the respondents have no right to claim partition in the coparcenary property of the parties.

5. Section 6 of the Hindu Succession Act, as amended, so far it is relevant for deciding this application, reads as under :-

"6. Devolution of interest in coparcenary property.-

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the

coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,
and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition to testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act

and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.- For the purposes of this subsection, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not."

6 Respondent No. 2 being the daughter of the deceased Somnath certainly would be the coparcener in

view of the above mentioned provision. Consequently, she is entitled to claim share in the coparcenary property. When petitioner No. 2 is claiming partition and separate possession of the property of her share in the coparcenary property, the contention of the petitioners that she has no right to file the suit for partition and separate share would not at all be sustainable in view of the above mentioned provision.

7. I do not find any substance in the Revision Application filed by these petitioners challenging the order dated 22nd July, 2015, passed by the Trial Court. The Trial Court has rightly considered the facts as well as the provisions of Section 6, as amended, of the Hindu Succession Act and rightly rejected the application (Exh-24). In the result, I pass the following order:-

O R D E R

- (i) The Civil Revision Application is dismissed.
- (ii) No costs.

[SANGITRAO S. PATIL]
JUDGE