

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 395 OF 2017
ALONG WITH
CIVIL APPLICATION NO. 783 OF 2017**

Balasaheb Daulatrao Mahadik and Ors. ... Appellants /Applicants
Versus
Lila Vasantrao Mahadik ... Respondent

Mr. N.V. Bandiwadekar for the Appellant / Applicants.
Ms. Nayana Chipade for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 26TH JULY, 2017

P.C.:

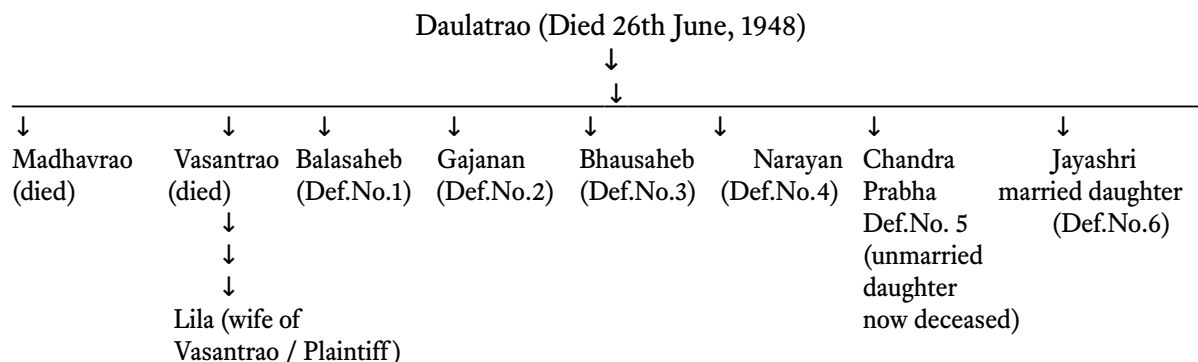
1. Special Civil Suit No. 524 of 2017 was filed by Lila Vasantrao Mahadik, the Respondent herein ('Original Plaintiff') before the Court of Civil Judge, Senior Division, Kolhapur (the 'Trial Court'), wherein the relief sought against the Defendants (the Appellants herein) was for partition and separate possession of her 1/5th share in the Suit Property. The Suit filed by the Respondent, was allowed by Judgment and Decree dated 7th September, 2011, and it was declared that the Respondent and the Appellant Nos. 1 to 4 ('Original Defendant Nos. 1 to 4') have equal 1/5th share in the Suit Properties, more particularly described in Paragraphs 1 (a) and (b) of the Plaint.
2. Being aggrieved, the Appellants ('Original Defendants') impugned the

Judgment and Decree of the Trial Court dated 7th September, 2011 by filing an Appeal being Regular Civil Appeal No. 32 of 2013 before the Principal District Judge, Kolhapur ('the First Appellate Court'), which too confirmed the Judgment and Decree of the Trial Court, save and except that the First Appellate Court declared that the Respondent (Original Plaintiff) is entitled to get 37/216 share. The Appellants (Original Defendant Nos. 1 to 4) are entitled to 43/216 share each and the Original Defendant No. 6 - Jayashree is entitled to get 7/16 share, in the Suit Properties.

3. The Appellants once again being aggrieved therefrom, have preferred the above Second Appeal under Section 100 of the Code of Civil Procedure, 1908 ('CPC').

4. For the sake of convenience, the Appellants and the Respondent are referred to hereinafter as per their original status i.e. as the Defendants and the Plaintiff respectively.

5. The Plaintiff - Lila Vasantao Mahadik has in the Suit stated that the Suit Properties are the ancestral properties of the Mahadik family. The genealogical tree of the Mahadik family is set out hereunder :



6. According to the Plaintiff, the Defendant Nos. 1 to 4 are the brothers of her husband - Vasantrao Mahadik. The elder son in the family namely Madhavrao died on 3rd May, 1992, Defendant No. 5 is the unmarried sister of the Plaintiff's husband - Vasantrao (who passed away during the pendency of the Suit); Defendant No. 6 is the married sister of Vasantrao. According to the Plaintiff, the father of Vasantrao and his siblings was Daulatrao who died on 26th June, 1948 and as per the law of inheritance the daughters had no right of succession ; Defendant Nos. 5 and 6 were joined as party Defendants so as to avoid any obstruction in the division and the delivery of possession of the Suit Properties and therefore no reliefs are sought against Defendant Nos. 5 and 6 ; the Suit Properties were never partitioned amongst her husband and his brothers ; the Plaintiff's husband and his brother Madhavrao were residing jointly and the Defendants were residing separately from them ; as there was no meeting of minds among all the brothers, they were not residing together ; Vasantrao and Madhavrao were residing in the house situated on CTS No. 1782 ; Vasantrao died on 16th May, 1986 leaving behind the Plaintiff as his only legal heir ; after the death of Vasantrao, the Plaintiff applied to enter her name in the Property Card ; after making due enquiry, her name was inserted in the Property Card ; thereafter the Defendants preferred an Appeal before the Consolidation Officer ; in the meantime they harassed the Plaintiff and ousted her from the house ; as the Plaintiff had no support of the others, she initially resided at Nipani, Taluka Chikkodi, District : Belgaum and then

she shifted to Mouje Karanjivane ; the Consolidation Officer allowed the Appeal of the Defendants and remanded the matter for fresh enquiry ; the Plaintiff had not received Notice of fresh enquiry ; the Defendants represented to the Enquiry Officer that the Plaintiff is neither the wife of Vasantrao nor his legal heir ; on the basis of the statement made by the Defendants, the City Survey Officer directed the Plaintiff to get her status of heir-ship declared from the Civil Court and till then her name was kept in the other rights column ; the Plaintiff preferred an Appeal before the Consolidation Officer ; after the death of Vasantrao the Defendants with an intent to grab his share, harassed the Plaintiff and evicted her from the house ; since 1988 the Plaintiff is residing at the mercy of her brother ; the Plaintiff therefore filed Special Civil Suit No. 524 of 1997 and sought partition of the Suit Properties as set out hereinabove.

7. Defendant Nos. 1 to 4 in their common Written Statement resisted the Suit claim. They admitted the description of the property and the family tree, but they denied the relationship between the Plaintiff and Vasantrao. They submitted that as there was partition of the Suit Properties among the coparceners nothing remained to be divided and therefore the Suit is not maintainable. They denied that the Plaintiff lived in the Suit house and she was evicted by them after the death of Vasantrao. According to them, in 1965-66 Vasantrao who was unmarried left for Goa after taking his share in partition and thereafter he never returned back to Kolhapur to reside jointly with the Defendants or Madhavrao ; Vasantrao continued to reside at Goa and

he had written a letter stating that he had kept a mistress and he had many grievances against her ; from the statement made by the Plaintiff that Vasantryao was residing separately from his brothers, it can be inferred that there was division of the property among all the brothers ; since the Plaintiff posed herself as Lila, Liladevi and Lilabai, it cannot be inferred that the Plaintiff - Lila was married to Vasantryao and she holds the status of his widow ; till the relation of husband and wife between the Plaintiff and Vasantryao is established, the Plaintiff has no right to claim partition; in fact all the male members of the Mahadik family are unmarried ; if the Plaintiff was residing in the Suit house with Vasantryao, her name ought to have appeared in the Voters List ; her name is also not found in the Ration Card, therefore the Plaintiff does not have any cause of action to claim partition and the Suit deserves to be dismissed with costs.

8. Defendant No. 6 (the married sister of Vasantryao and Defendant Nos. 1 to 4) has also filed her Written Statement contending that Vasantryao was not married ; the Plaintiff has filed the Suit 12 years after the death of Vasantryao ; the Plaintiff has no right to claim partition and possession of the Suit Properties and the Suit be dismissed.

9. The learned Trial Court therefore framed the following issues :

- (i) Does the Plaintiff prove that the Suit Properties are ancestral properties and her deceased husband is having one-fifth share in them ?
- (ii) Does the Plaintiff prove that no partition by metes and bounds ever took place between the joint family properties ?

- (iii) Does the Plaintiff prove that after the death of her husband, the Defendants drove her out of their house in 1988 ?
- (iv) Do the Defendants prove that the Plaintiff has no locus standi to file the instant Suit, she not being the legally wedded wife of the deceased Vasantrao Mahadik ?
- (v) Do the Defendants prove that the Plaintiff has no right to demand any share in the Suit Properties ?
- (vi) Do the Defendants prove that the Plaintiff has deliberately filed a false Suit because of which they are entitled to claim compensatory costs of Rs. 5,000/- from her ?
- (vii) Is the Plaintiff entitled to partition and separate possession of the alleged one-fifth share ?
- (viii) Is the Plaintiff entitled to claim Rs.36,000/- being mesne profits for the past three years immediately preceding the filing of the Suit?

10. The Plaintiff adduced her evidence by filing her Affidavit of Evidence and offering herself for cross-examination by the otherside. She also produced documentary evidence consisting of the Memorandum of Marriage along with the application for Registration of Marriage (Exhibits-45 and 94), marriage invitation card from the side of the bride (Exhibit-46), marriage invitation card from the side of the bride-groom (Exhibit-47), Inland letter dated 17th August, 1966 written by the father

of the Plaintiff - Shri R.H. Patil to the Plaintiff at the Goa address (Exhibit-48), Inland letter dated 6th September, 1966 written by the Plaintiff's father to the Plaintiff at the Goa address (Exhibit-49), Inland Letter dated 6th December, 1966 written by the Plaintiff's father to the Plaintiff at the Goa address (Exhibit-50), Inland Letter dated 4th July, 1967 written by the Plaintiff's father to Vasantao D. Mahadik at the Goa address (Exhibit-51), Inland Letter dated 20th November, 1967 written by Vasantao Mahadik to the Plaintiff at her father's address at Post Haladi (Exhibit-52), Inland Letter dated 15th December, 1967 written by the Plaintiff's father to Vasantao D. Mahadik at the Goa address (Exhibit-53), letter dated 15th March, 1968 along with postal envelope written by the Plaintiff's father to the Plaintiff (Exhibits-54 and 55), letter dated 20th February, 1969 along with postal envelope written by the Plaintiff's father to Vasantao D. Mahadik (Exhibits-56 and 57), letter dated 24th August, 1998 from the Assistant Provident Fund Commissioner to the Director of Accounts in which the Plaintiff is shown as the widow of Vasantao D. Mahadik and is declared eligible to family pension of Rs.425/- with effect from 1st April, 1995 (Exhibits-58 and 59), School Leaving Certificate of the Plaintiff issued by Murgud Vidhyalay, Murgud, District Kolhapur (Exhibit-93), Death Certificate of Vasantao Daulatrao Mahadik issued by Kolhapur Municipal Corporation showing date and place of death as 16th May, 1986 in Rjarampuri, 2nd Lane, Kolhapur (Exhibit-76) and Death Certificate of Madhavrao Daultrao Mahadik showing date of death as 30th May, 1992 (Exhibit-77).

11. Though the Defendants stated in their Written Statement that Vasantao

during his stay at Goa had written a letter stating therein that he had kept a mistress and he is not pleased with her behaviour, the said letter is not produced by the Defendants. The Defendant Nos. 1 to 4 examined Defendant No. 4 - Bhavusaheb Daulatrao Mahadik and one independent witness - Vasantrao Dattoba Jadhav.

12. The Trial Court has given a detailed analysis of the oral as well as documentary evidence submitted before it and after appreciating the same he has come to the conclusion that the Plaintiff has proved marital relations with Vasantrao. The Trial Court held that the Defendants have not brought any circumstance in the evidence led by the Plaintiff, which creates suspicion with regard to her claim of being married to Vasantrao. The documentary evidence produced by her corroborates her testimony. The evidence produced by the Plaintiff therefore cannot be discarded. The Trial Court also recorded that DW-1 - Bhausahab Daulatrao Mahadik (Defendant No. 4) admitted in his cross-examination that till date the Suit Properties are joint properties and no partition was effected and therefore the claim of the Defendants in the Written Statement that the Suit Properties were already partitioned, cannot be accepted. The Trial Court therefore decreed the Suit and declared that the Plaintiff and the Defendant Nos. 1 to 4 have equal 1/5th share in the Suit Properties.

13. As earlier stated, being aggrieved by the Judgment and Decree of the Trial Court dated 7th September, 2011, the Defendants filed an Appeal being No. 32 of 2013 before the Principal District Judge, Kolhapur. The First Appellate Court has by its detailed Judgment dated 26th August, 2016, after appreciating the oral and

documentary evidence filed by the parties, dealt with the contentions of the parties and has dismissed the Appeal with costs. However, the Decree declaring the extent of the shares of the Plaintiff and the Defendants was modified as recorded in Paragraphs 19 and 20 of the Judgment dated 26th August, 2016, which are reproduced hereunder :

"19. The question is of extent of shares of the Plaintiff and the Defendants in the Suit properties. Deceased Daulatrao was survived by six sons and two daughters. Since he died in 1948, the daughters did not inherit any of the properties of deceased Daulatrao. Late Vasantrao and his five brothers, therefore get equal share in the Suit properties i.e. 1/6th share each. Except Vasantrao, all the five brothers did not marry. Vasantrao passed away in May, 1986. Vasantrao's 1/6th share has been inherited by Plaintiff, being his widow. In May, 1992 Madhavrao passed away. Admittedly, Madhavrao did not have Class-I heir. The deceased Madhavrao's 1/6th share in the Suit properties goes to his four brothers and two sister namely Defendant Nos. 1 to 6 equally i.e. 1/36th, 1/36th, 1/36th, 1/36th, 1/36th and 1/36th. The Defendant No. 5 sister Chandraprabha died unmarried. Her 1/36th share in the Suit properties goes to four brothers, one sister and Plaintiff as per Sch. Class I shall be divided amongst six of them equally which comes to 1/216. The total share that comes to the Plaintiff is 1/6th + 1/296 = 37/216 to the Defendant Nos. 1 to 4 (Brothers) 1/6th + 1/36th + 1/216th = 43/216 and for Defendant No. 6 Jayshree 1/36th + 1/216 = 7/216th.

20. This way, the Plaintiff gets 37/216 share in the Suit properties.

While the Defendant Nos. 1 to 4 would get 43/216 share each therein. The Defendant No. 6 Jayashree would get 7/216 share in the Suit properties."

14. In the above Second Appeal, the Advocate for the Appellants has once again contended before this Court that the Respondent was not married to Vasantrao and that the partition had earlier taken place. In my view, the Trial Court as well as the Appellate Court, have after appreciating the oral as well as documentary evidence led / placed before these Court/s by the parties, vide their detailed reasoned Judgments, given concurrent findings on facts namely that the Respondent was married to the deceased Vasantrao and that no partition had taken place earlier as alleged by the Defendants. Therefore, in my view no substantial question of law, arises in the present Second Appeal and the same is therefore dismissed. The above Civil Application is also dismissed.

(S.J.KATHAWALLA, J.)