

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 959 OF 2015ALONG WITHCIVIL APPLICATION NO. 1343 OF 2016

Ratnabai Murgendri Angadi

... Appellant

Vs.

Basappa Ramchandra Hingmire and another

....Respondents

*Mr. Milind Deshpande for the Appellant/Applicant.**Ms. Chaitrali Deshmukh along with R.S. Alangi for the Respondents.***CORAM: S. J. KATHAWALLA, J.****DATE: 21st June, 2017****P.C.:**

1. Regular Civil Suit No. 698 of 2011 was filed by the original Plaintiff – Ratnabai Murgendri Angadi (Appellant herein) on 28th April, 2013, against her brothers, the original Defendant Nos. 1 and 2 – Basappa Ramchandra Hingmire and Channappa Ramchanra Hingmire (Respondent Nos. 1 and 2 herein) seeking partition of the joint family property. The father of the original Plaintiff and Defendants, Ramchandra Hingmire passed away on 23rd November, 1959. His

wife Malkavva passed away on 1st October, 1989. Since one of the daughters, Shantabai, passed away before the demise of her parents Ramchandra and Malkavva and the husband of Shantabai married another woman, admittedly the only heirs of Ramchandra and Malkavva are the Plaintiff and the Defendants.

2. After the death of Ramchandra, land gat No. 213 admeasuring 2 Hectares 35 Ares situated at Vinchur, Tal. South Sholapur (suit property) was mutated in the name of the original Defendant No.1 (Respondent No.1 herein) by virtue of M.O. No. 1400. The Appellant herein / original Plaintiff demanded her separate share in the suit property which Defendant No. 1 refused. The Appellant filed a Suit seeking partition and separate possession of the suit property. Defendant No. 1 filed his written statement and resisted the plaint by contending that it is Defendant No. 2 who has instigated the Plaintiff to file the present suit. He submitted that the Plaintiff is not entitled to any share in the suit land as she is residing separately since long from the family of the Defendants. She therefore prayed that the suit filed by the Plaintiff be dismissed.

3. Defendant No. 2 also filed his written statement. In his written statement he supported his sister and prayed that a decree for partition and separate possession be passed.

4. The Learned Trial Court framed issues and after allowing the parties to

lead evidence and advance arguments, decreed the suit by his Judgment dated 20th April, 2013 and directed Defendant No. 1 to deliver 1/3rd share in the Suit land to the Plaintiff by effecting partition and separate possession.

5. Aggrieved by the judgment dated 20th April, 2013, the original Defendant No. 1 preferred an Appeal before the learned District Judge II, Sholapur. It was argued on behalf of Defendant No. 1 in Appeal that the share which is allotted by the trial Court to the Plaintiff is not correct. According to him, the father of the Plaintiff viz. Ramchandra died in the year 1959 and it is at that time that the succession opened and the learned Trial Court ought to have decreed the suit by following the theory of notional partition. It was argued on behalf of the Appellant (original Plaintiff) that she being the daughter of Ramchandra is entitled to 1/3rd share in the suit land. It was further argued that as per the amended Hindu Succession Act of 2005, the daughters are treated as co-parceners in the family and therefore the learned trial Court was correct in coming to the conclusion that the Appellant is entitled to 1/3rd share.

6. The Learned District Judge-II, Sholapur, relying on the law laid down by the Hon'ble Apex Court in the matter of *G.Sekhar vs. Gita and others*¹ and the decision of this Court in the matter of *Vaishali Satish Ganorkar vs. Satish*

¹ 2009 SCR 2476

*Kesavram Ganorkar*² held that as the father of the Plaintiff viz. Ramchandra died in the year 1959 and while deciding the shares of the Plaintiff as well as the Defendant, the theory of national partition has to be applied and on the basis of notional partition, the share of Plaintiff as well as the Defendants should be carved out. The Learned Judge further proceeded to hold that had the partition taken place in 1959, in that event, there would have been three shares i.e. Ramchandra, Defendant No. 1 and Defendant No.2. Ramchandra would have got 1/3rd share in land gat No. 213. In view of the death of Ramchandra his share would devolve upon the Plaintiff, Defendant No. 1 and Defendant No. 2 being his Class-I heirs as postulated under Section 8 of the Hindu Succession Act. Thus the share of the Plaintiff would come to 1/9th and the share of Defendant Nos. 1 and 2 would come to 4/9th each. The Learned District Judge-2, Sholapur therefore modified his judgment under Appeal to the extent of granting 1/9th share in the suit land to the Plaintiff and 4/9th share each to Defendant Nos. 1 and 2.

7. Being aggrieved by the decision of the District Judge-, Sholapur, the Appellant has filed the above Second Appeal once again contending that she is entitled to 1/3rd share in the suit property. In my view, the first Appellate Court

² 2012 All M.R. 737

i.e. District Judge-II, Sholapur, has correctly applied the provisions of the Hindu Succession Act to the facts of the present case as well as the ratio laid down by the Hon'ble Supreme Court in its several judgments and has correctly held that the Plaintiff is entitled to 1/9th share in the suit land. In view thereof, no question of law arises in the above Appeal. The Second Appeal is accordingly dismissed. In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and the same is accordingly disposed off.

(S.J. KATHAWALLA, J.)