

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.7 OF 1995

Shivaji Peera Vibhute	...	Appellant
Versus		
Bhagwan Ramchandra Bhosale		
since deceased by his legal heirs-		
1A. shakuntala Bhagwan Bhosale		
And Others	...	Respondents

.....

Mr. Nikhil N. Pawar i/b T.S. Ingale for the Appellant.

.....

CORAM : S.C. GUPTE, J.

DATE : 25 JANUARY 2017

(JUDGEMENT)

. This second appeal challenges a judgment and order passed by the 3rd Additional District Judge, Sangli. By the impugned judgment and order, the learned Additional District Judge dismissed Regular Civil Appeal No.403 of 1988 filed by Respondent Nos.1 and 2 as well as Regular Civil Appeal No.425 of 1988 filed by the Appellant. The Appellant herein is the original Plaintiff in Regular Civil Suit No.15 of 1983. The suit was partly decreed by the Joint Civil Judge, Junior Division, Sangli, declaring 1/4th share of the Appellant in the suit property. The decree of the Joint Civil Judge, was confirmed by the learned District Judge in the Regular Civil Appeals. The Appellant is aggrieved by this order.

2 The appellant is the adoptive son of Peera Laxman Vibhute (“Peera”). He was adopted on 15 July 1978. The adoption deed is registered on 18 July 1978. The suit property was originally owned by one Subarao. Subarao died in 1950, leaving behind him two heirs - his widow Krishnabai and son Shankar. Shankar died in the year 1962, leaving him surviving by his mother Krishnabai and widow Radhabai. Peera had purchased the suit property from Radhabai under a registered sale deed dated 28 January 1966. Peera had filed a suit bearing Regular Civil Suit No.485 of 1966 for perpetual injunction against deceased Krishnabai and Respondent Nos.2 and 3 herein (original Defendant Nos.2 and 3). That suit was dismissed. An appeal therefrom was also dismissed. The dismissal was on the basis that Peera was found not be in possession of the suit property. In course of its order, the Trial Court has observed that deceased Peera was owner of only one half share of the suit property, since Radhabai, widow of Shankar, who was the predecessor in title of Peera, herself had and was entitled to sell only one half share of the suit property. It is the case of the Appellant that he is the owner of the suit property to the extent of one half share on the basis of the judgment referred to above, whereas the impugned decree in his own suit for partition gives him only one fourth share.

3 The controversy in the present matter pertains to the ownership of the Plaintiff's vendor Radhabai. It is common ground that the suit property belonged to Subarao who died intestate in the year 1950. When succession opened in year 1950, in the light of the provisions of the Hindu Women's Right to Property Act, 1937, wife of Subarao, namely, Krishnabai got a statutory right or interest the suit property. Subarao was survived by his widow Krishnabai and son Shankar. Both of them, accordingly, got one

half share each of the suit property. The joint family between Krishnabai and Shankar admittedly continued after the death of Subarao. Krishnabai's half share, though the same represented limited ownership of Krishnabai under the provisions of the Hindu Women's Right to Property Act, 1937, matured into full ownership after coming into force of the Hindu Succession Act, 1956. Shankar died in 1962. Under the provisions of Hindu Succession Act, Shankar's heirs were his mother Krishnabai and widow Radhabai. His one half share of the suit property devolved equally unto them, each thus taking one fourth share. Radhabai, the widow of Shankar, thus, succeeded only to one fourth share in the property of Subarao. That was the share which was sold by Radhabai to Peera, the adoptive father of the Appellant.

4 On these facts, it is beyond any doubt that Krishnabai had three fourth share in the entire suit property, whilst the share held by Radhabai and which was transferred to the Appellant was to the extent of only one fourth. Both the Trial Court and the First Appellate Court have correctly analysed the evidence before them and applied the correct law. The impugned judgment and order of the District Judge does not suffer from any error of law. The provisions of the Hindu Women's Right to Property Act, 1937 and the Hindu Succession Act, 1956 which followed it have been properly applied for working out the respective shares. So far as the argument that the Appellant's share was already fixed in the earlier suit, namely, Regular Civil Suit No.485 of 1966, is concerned, the Trial Court has correctly held that the matter in controversy in the earlier suit did not directly concern itself with the exact share of Radhabai in the suit property. It was merely a collateral or incidental matter, not directly and

substantially in issue. The earlier suit was for injunction simplicitor based on possession and the Court was not called upon to determine the respective shares of the parties in the suit property. The Court was merely concerned with the possession and rightfulness of such possession, and therefore, the finding in the earlier suit that Peera was entitled to half share does not operate as res-judicata in the present suit.

5 In the premises, there is no merit in the second appeal and the same is dismissed with no order as to costs.

6 Learned Counsel for the Appellant applies for continuation of the limited interim protection operating in his favour. The application is refused.

(S.C.GUPTE, J.)