

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 2 OF 2015
IN
REGULAR CIVIL APPEAL NO. 152 OF 2008
IN
REGULAR CIVIL SUIT NO. 12 OF 1996
ALONGWITH
CIVIL APPLICATION NO. 2 OF 2015

Rupali Maruti Turai & Anr. ...Appellants
vs.
Ashok Subrao Matkari & Ors. ...Respondents

Mr.Bhushan Walimbe for Appellants.
Mr.Shivaji A. Masal for Respondents.

CORAM : S.C. GUPTE, J.

6 JANUARY 2017

P.C. :

Heard learned Counsel for the parties.

2 This second appeal raises a short question of law, namely, whether a daughter born prior to 9 September 2005 is entitled to the benefit of amended Section 6 of the Hindu Succession Act. After the impugned judgment and order of the First Appellate Court was passed on 10 April 2014 relying on the Division Bench decision in **Vaishali S. Ganorkar vs. Satish Keshavrao Ganorkar**¹, a Full Bench of our court, in the case of **Badrinarayan Shankar Bhandari vs. Omprakash Shankar Bhandari**², on 14 August 2014, has decided this question holding the decision of the Division Bench in **Vaishali S. Ganorkar** as *per incurim* in view of the Supreme Court decision in **Ganduri Koteswaramma vs. Chakiri**'s³ case.

1 2012(3) Mah.L.J.669

2 2014(5) Mh.L.J.

3 2012(1) Mah.L.J. (S.C.) 613

The Full Bench has held that the legislative intent in enacting clauses (b) and (c) was retroactive and that even a daughter born prior to 9 September 2005, i.e. the date of coming into force the amendment, was entitled to the benefit of Section 6 of the Hindu Succession Act (as amended). Since the impugned order of the first Appellate Court was expressly based on the case of the Division Bench decision of **Vaishali S. Ganorkar** (supra) which was dissented from by the Full Bench as *per incuriam* in view of the Supreme Court decision in **Ganduri Koteswaramma** (supra), the impugned order of the first Appellate Court will have to be set aside and the matter remanded to the District Court at Sangli for a fresh hearing in accordance with law.

3 The appeal is accordingly allowed and the impugned order of the learned District Judge-3, Sangli is set aside and Regular Civil Appeal No.152/2008 is remanded to the District Court at Sangli for a fresh hearing in accordance with law. The parties are accordingly directed to appear before the learned District Judge-3 at Sangli on 23 January 2017 at 11.00 a.m.. This order is passed in the presence of the Respondents' Advocate and he confirms that he shall appear before the court on 23 January 2017.

4 On the joint request of the parties, the hearing of the appeal is expedited. The District Court at Sangli shall hear the parties and decide the case as expeditiously as possible and in any event, within a period of six months from today.

5 Since the second appeal is disposed of, the civil application taken out for interim relief therein (Civil Application No.2 of 2015) does not survive and the same is disposed of.

(S.C. Gupte, J.)