

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.163 OF 2015
WITH
CIVIL APPLICATION NO.334 OF 2015
IN
SECOND APPEAL NO.163 OF 2015**

Parsu Maruti Jadhav,
Since deceased through L.Rs.

...Appellants

vs.

Rajaram Yashwant Jadhav & Ors.

...Respondents

....

Mr. Abhijeet Kandarkar, for the Appellants.

Mr. Dilip Shinde, i/b. Vikas Mali, for Respondent Nos. 1 to 3, and 7 to 9.

.....

CORAM : S.C. GUPTE, J.

DATED : 7 MARCH 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Second Appeal challenges a judgment and order passed by the District Court at Islampur in Regular Civil Appeal No.46 of 2008. By this impugned judgment and order, the learned District Judge dismissed the appeal filed by the Appellants herein and confirmed the judgment and decree passed by the Joint Civil Judge, Junior Division, Islampur in Regular Civil Suit No.552 of 1990.

3. The subject matter of controversy in the present appeal, as

urged by learned Counsel for the Appellants, is two-fold. Firstly, it is submitted that this suit, which is a suit for partition, concerns inter alia the share of Yashwant, the predecessor-in-title of the Plaintiffs in the joint family property of the family. It is submitted that Yashwant had been given in adoption to one Rama Vithu Pawar and, upon such adoption, ceased to have any relationship with the family of his birth. It is submitted that, in the premises, Yashwant, the predecessor-in-title of the Plaintiffs, did not have any share in the property of the family of his birth. The question as to whether Yashwant was the adopted son of Rama Vithu Pawar is essentially a question of fact or, at any rate, a mixed question of law and fact. Both courts below have come to a concurrent finding that he was not the adopted son of Rama Vithu Pawar. No substantial question of law arises in this connection. None of the findings of fact of the Courts below can be assailed as perverse. So also, the application of law by the courts below cannot be said to be suffering from any error. The lower Appellate Court has correctly appreciated the law of adoption in paragraph 13 of the impugned judgment and order. This law has been correctly applied to the facts found by the court. No question of law arises in connection therewith.

4. Secondly, it is submitted that the share of the Plaintiffs has not been correctly assessed by the Trial Court, the lower Appellate Court having confirmed the same. It is submitted that 1/3rd share of Yashwant in the joint family property cannot merely devolve upon the Plaintiffs, who are respectively the two sons and widow of the deceased Yashwant. It is submitted that the share of deceased Yashwant will also devolve equally upon his three daughters, who are, respectively, Defendant Nos.

6 to 8 to the suit. The property is admittedly a joint family property and not the self acquired property of the deceased Yashwant. It is equally not in dispute that the deceased Yashwant died and the succession opened prior to the coming into effect of the Amendment Act of 2005, which amended Section 6 of Hindu Succession Act, 1956. There is, in the premises, no question of the daughters, Defendant Nos. 6 to 8, claiming any share in the property by birth. The conclusion of the Trial Court that the Plaintiffs had succeeded to 1/3rd share of the deceased Yashwant cannot, thus, be assailed on a question of law.

5. There is, accordingly, no merit in the Second Appeal and the same is dismissed.

6. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also disposed of.

7. Learned Counsel of the Appellants prays for continuation of the ad-interim relief operating in his favour in the Second Appeal. Two courts below having rejected the Appellants' defence and their second appeal being summarily dismissed by this Court, there is no question of continuing the ad-interim relief any further. The application for ad-interim relief is, accordingly, rejected.

(S.C. GUPTE, J.)