

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

WRIT PETITION NO.9382 OF 2015

Sadashiv Sukdeo Lilake Petitioner/
Ori. Deft. no.1

Vs.

Smt. Bhagirathibai Tukaram Kadale.... Respondents
deceased thru' legal heirs
Jagan Tukaram Kadale & Ors.

**WITH
WRIT PETITION NO.9094 OF 2016**

Smt. Bhagirathibai Tukaram Kadale.... Petitioners
& Ors.

Vs.

Sadashiv Sukdeo Lilake & Ors. Respondents

Mr. M.M. Sathaye for the Petitioner in WP No. 9382 of 2015 and for
Respondent in WP No. 9094 of 2016.

Mr. Sachin Gite for the Petitioner in WP No. 9094 of 2016 and for
Respondents in WP No. 9382 of 2015.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 6th December, 2017

P.C.:

1 Heard. Rule. Rule made returnable forthwith by consent
of the parties.

2 In Writ Petition No.9382 of 2015, the petitioner is the original defendant no.1 in Regular Civil Suit No.49 of 2009 whereas the petitioner in Writ Petition No.9094 of 2016 is the original plaintiff in the same suit. The suit was decreed by the judgment and order dated 11th January 2011.

3 Being aggrieved by the said judgment and order, the defendant no.1 had filed Regular Civil Appeal No.40 of 2011 before the appellate Court. The first contention of the defendant no.1 in the trial court was that there cannot be a suit for partition and possession under the Hindu Succession Act in the present case as the parties herein belong to Mahadeo Koli community, which is enlisted as scheduled tribe in the state of Maharashtra. It was therefore contended by defendant no.1 that the civil court had no jurisdiction to try the said suit as the parties belong to scheduled tribe and therefore Hindu Succession Act was not applicable. In the course of hearing of the appeal, the learned appellate court has passed the following order :

- “i) The trial court shall frame and decide the issue “Whether in Mahadeo Koli community, there is custom to allot share to the married or unmarried daughters in the family property? The trial court shall decide the issue after giving opportunities to the plaintiffs and defendants to amend their pleadings and to lead the evidence.
- ii) The trial court shall record the finding on the issue and return the same to this court within six months from the date of receipt of the record and proceedings.
- iii) The parties are directed to appear before the trial court on 31st August 2015.
- iv) The record and proceedings be sent back to the trial court”.

4 In fact due to bar under Section 10 of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, there is a specific bar under Section 10 of the Act that no Civil Court can decide or deal with any question under this Act. Section 10 of the said Act reads as follows :

“10. No civil court shall have jurisdiction to settle, decide or deal with any question which under this

Act is required to be decided or dealt with by the Collector, the Commissioner, the Maharashtra Revenue Tribunal or the State Government.

5 It is pertinent to note that the plaintiffs as well as the defendants are challenging the same order and the learned counsel in Writ Petition No. 9094 of 2016 has also fairly submitted that it would not be necessary to frame such an issue as appeal is the continuation of the suit and therefore it would be necessary to decide the appeal on its own merits as well as the evidence brought before the first court, the submissions of the respective counsel and findings recorded before the first court. It is, in view of this the order dated 28th July, 2015 passed by the Principal District Judge, Nashik deserves to be quashed and set aside with a specific direction that the learned appellate court shall decide the appeal on its own merits and in accordance with law.

6 Rule is made absolute. Both petitions stand disposed of.

(*Smt. Sadhana S. Jadhav, J*)