

Sequeira

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

*SECOND APPEAL NO. 113 OF 2017
Along with
CIVIL APPLICATION NO. 263 OF 2017
(For injunction)*

Rahul Shridhar Khalkar. .. Appellant
Vs
Shridhar Murlidhar Khalkar & ors. .. Respondents

Mr.Tushar Sonawane, for the Appellant.

Mr.A.B.Tajane, for Respondent Nos.2 & 3.

*Coram : N.M.Jamdar, J.
Date : 4 May 2017.*

Oral Order :

By this Appeal, the Appellant has challenged the judgment and orders passed by the learned Civil Judge, Junior Division Nasik and learned District Judge, Nasik.

2. The Appellant is the son of Respondent No.1 herein. Both the Courts have held that the Appellant is illegitimate son of Respondent No.1. Suit was filed by the Appellant along with his mother and sister bearing No.110 of 2010 in the Court of Civil Judge, Junior Division, Nasik. The Appellant's mother is the second wife of Respondent No.1. The suit was filed claiming that the decree passed

in Suit No.109 of 2007 was filed by the son of Respondent No.1 and his first wife, be set aside. By this decree the son and the first wife were granted one third share, and also a share in Respondent no.1's property. It was contended by the Appellant- Plaintiffs that they too have a right in the suit property and also $1/3^{\text{rd}}$ share in the $1/7^{\text{th}}$ share of Respondent No.1. The learned Civil Judge dismissed the Suit by judgment and order dated 10 September 2012. The Appeal No.522 of 2012 filed by the Appellant was dismissed by the learned District Judge holding that though the Appellant may have a share in Respondent No.1's $1/7^{\text{th}}$ share but it can only arise after the Respondent No.1, the father expires and as on date the Appellant has no civil right. Being aggrieved the present Second Appeal is filed.

3. The learned counsel for the Appellant relied upon the decision of the Apex Court in the case of *Revanasiddappa and another Vs Mallikarjun and others – (2011) 11 SCC* to contend that issue needs to be looked at keeping in mind various observations made by the Apex Court and the law laid down by the Apex Court that the illegitimate children will have claim or share in the property falling to the share of the father on partition of the ancestral property.

4. In the present case, firstly partition took place by virtue of Regular Civil Suit No.143 of 1997 wherein certain shares were granted to the parties therein including Respondent No.1. Thereafter by virtue of order passed in Regular Civil Suit No.109 of 2007 filed by the first wife and the son, the earlier partition decree was modified

and parties were held to have one seventh share i.e. the Defendant Nos.6 and 7 therein, present Respondent Nos.2 and 3. Following directions were issued in clause (4) of the order.

'4. Partition of landed property be carried out by the Revenue Officer in accordance with Law.'

The Respondent Nos.2 and 3 have now instituted execution proceedings in respect of their share as declared in the direction reproduced above.

5. As on date the position of law is that ultimately the Appellant has a share in the property which has fallen to the share of Respondent No.1, his father, however, this right accrues only after the death of the parents, which is a view taken by the learned District Judge. However, it has to be noted that by the above decision, the Apex Court has referred this issue for consideration of the larger Bench. It is not that the Appellant will not have no right in future. It is only deferred till the lifetime of the father.

6. In this context, since the appeal requires consideration in detail, if the Respondents sell away the property, nothing will be left to the Appellant. It was put to the learned counsel for the Respondent Nos.2 and 3 as to whether Respondent Nos.2 and 3 are desirous of creating any third party rights or part with possession of their share which they will receive pursuant to the execution proceedings in respect of the Civil Suit No.109 of 2007. The learned counsel for

Respondent Nos.2 and 3, on instructions states that Respondent Nos.2 and 3 have no intention nor will not create any third party rights or part with possession when they will receive their one third share in the Defendant No.1's one seventh share as stated in clause (4) of the order reproduced above. In view of this categorical statement, the apprehension of the learned counsel for the Appellant that the Appellant will not get any share in the property even in future does not survive. The learned District Judge, in the impugned order, has made it amply clear that the Appellant can institute legal proceedings for redressal of his right after the death of Respondent No.1. Therefore, it is open for the Appellant to take necessary steps if that eventuality arises and till such eventuality arises, the statement made by the learned counsel for Respondent Nos.2 and 3 will adequately protect his interest. If such a suit is filed by the Appellant as above, needless to state that it will be considered on its own merits and the shares of the parties in the one seventh share of the father will be suitably adjusted.

7. In view of the above position, it is not necessary to interfere with the impugned order and the execution proceedings that have been filed. Second Appeal is accordingly disposed of. In view of the disposal of the Second Appeal, the Civil Application is disposed of. Ad-interim relief is vacated.

(N.M.Jamdar, J.)