

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.144 OF 2017

SMT. TAIBAIWD/O PANDURANG KSHIRSAGAR & OTHERS
VS
SMT. MADHUBAI PANDURANG KSHIRSAGAR

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri H. P. Lingayat, Advocate for the appellant.
Shri R. R. Vyas Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.

DATED : JULY 21, 2017.

This appeal has been filed by the original defendants who are aggrieved by the decree for partition passed by the trial Court.

The original plaintiff is the first wife of one Pandurang. During the life time of Pandurang, he contracted second marriage with the defendant no.1 Taibai and defendant nos.2 & 3 are the issues born from that marriage. The plaintiff had initiated the proceedings against her husband by filing Regular Civil Suit No.96/1994. Those proceedings were compromised and the right of the plaintiff to receive maintenance amount of Rs.25,000/- was recognised. The proceedings ended in compromise dated 16-2-1997. After the death of Pandurang the plaintiff filed suit for partition and separate possession. The trial Court has

decreed the suit and the appellate Court has confirmed this decree.

Shri H. P. Lingayat, learned Counsel for the original defendant submitted that in view of the compromise decree at Exhibit-38, the plaintiff had given up her rights in the property and estate of Pandurang. The suit as filed was not maintainable in view of this compromise. Moreover, the compromise decree passed therein was not challenged and the same had become final. In fact, he submitted that the said decree could not have been challenged in view of provisions of Section 22 of the Legal Services Authorities Act, 1987. He, therefore, submitted that the suit was liable to be dismissed on that count.

Shri R. R. Vyas learned Counsel for the respondent supported the impugned judgment. According to him, the earlier proceedings filed by the plaintiff were only for grant of maintenance and the right of the plaintiff to seek partition could not be defeated.

Perused the impugned judgments. The facts indicate that the plaintiff had filed suit seeking maintenance against Pandurang. These proceedings were compromised as per decree at Exhibit-38. As per this compromise on paying an amount of Rs.25,000/- towards claim for maintenance, the plaintiff had no claim over the estate of Pandurang. The

compromise decree, therefore, precluded the plaintiff from claiming any further maintenance. The relief sought in the present proceedings was for partition and separate possession. This relief was not barred by virtue of that compromise decree. The suit as filed was also maintainable as the effect of that decree was not being taken away.

In view of aforesaid, I find that both the Courts have rightly granted relief of partition to the parties. No substantial question of law arises. The appeal is dismissed.

JUDGE

/MULEY/