

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.143 OF 2004

Ganeshsingh Uttamsingh Thakur and ors. ... Appellants

-VS-

Prem Singh Narayansingh Thakur and ors. ... Respondents.

Shri Shyam R. Jaiswal, Advocate h/f Shri P. R. Agrawal, Advocate for appellants.

Shri Badal Lonare, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : September 05, 2017

P.C.

This appeal was admitted on the following substantial question of law :

“ Whether the suit is bad for non-joinder of necessary parties, i.e. two daughters of Narayan Singh Thakur who died leaving behind him the co-parceners as well as the co-heirs, who instituted the suit for partition and separate possession of the share in the property ?

2. The appellants herein are the original defendant Nos.3 to 7 in the suit for partition filed by the respondent No.1 herein. It is the case of the original plaintiff that he has three brothers. They were

defendant Nos.1, 2 and one Uttamsingh who had expired in the year 1989. The appellants are the legal heirs of said Uttamsingh. The suit as filed is for partition of 1/4th share in the joint family property which is a residential house. The trial Court held that the sons of Narayansingh had 1/4th share each in the suit property. The appellate Court has confirmed this finding.

3. Shri S. Jaiswal, learned counsel for the appellants submitted that the plaintiffs failed to implead two daughters of Narayansingh in the suit. According to him, the said two daughters were necessary parties and in their absence, no decree for partition could have been passed. He referred to ground No.4 as raised in the memorandum of appeal to demonstrate that this ground was raised before the first appellate Court and submitted that the first appellate Court incorrectly held that said sisters did not have any share in the ancestral house. In support of his submission the learned counsel placed reliance on the decision in *Ali Amad (deceased represented by L.Rs) v. Sindhi Ebrahim Kasam and ors.* AIR 1983 Gujarat 156 and *Ramkrishan Ganapayya Hegde vs. Lashminarayana Timmayya Hegde* AIR 1984 Karnataka 45. To indicate that said daughters had a share in the property, he referred to the decision in *Badrinarayan Shankar Bhandari and ors. vs. Omprakash*

Shankar Bhandari AIR 2014 Bombay 151.

He also referred to provisions of Order I Rule 13 of the Code of Civil Procedure, 1908 and submitted that the suit was liable to be dismissed on account of absence of necessary parties. It was thus submitted that the decree as passed was liable to be set aside.

4. Shri B. Lonare, learned counsel for respondents supported the impugned judgment. He submitted that presence of married sisters was not necessary in the suit for partition as the suit property was a residential house. As the said sisters were married prior to 1994, they had no right in the same. He referred to provisions of Section 29-A to 29-C of the Hindu Succession Act, 1956 as amended in the State of Maharashtra. He also referred to the decisions in ***Prakash and ors. v. Phulavati and ors. AIR 2016 SC 769*** and ***Kishore Morarji Bhojraj and anr. vs. Jaya Hirachand Karani and ors. 2017(3) Mh.L.J. 909***. He therefore submitted that the appellate Court rightly held that failure to implead the sisters in the suit for partition would not be fatal.

5. I have heard the learned counsel for the parties at length and I have also perused the records of the case. It is not in dispute that besides the parties to the suit, Narayansingh had two daughters. It is

further not in dispute that said two daughters were already married prior to 1994. This fact is clear from the material on record. As per provisions of Sections 29-A to 29-C of the said Act, a daughter who is married before commencement of the amended provisions, coming into force would not be entitled to a right in the co-parcenery property. The legal position in this regard is well settled as held in ***Kishor Morarji Bhojraj*** (supra). The said amendment has come into force from 22/06/1994. In view thereof, as the said daughters were married prior to the coming into force of said amendment, they had no right in the ancestral property. Moreover, the suit property is a residential house only.

6. The first appellate Court in paragraph 15 has observed that there was a remote possibility of the said daughters getting a share in the ancestral property. Though it is true that their presence would have been necessary if they were entitled to any share in the ancestral property, in the facts of the present case, when as per the amended provisions of Section 29-A to 29-C of the said Act they are not entitled for any share, their non-joinder in the suit would not be fatal so as to dis-entitle the plaintiff from relief.

7. Hence the substantial question of law as framed is answered by holding that the suit was not bad for non-joinder of necessary parties.

Thus, there is no reason to interfere with the impugned judgment. The second appeal is therefore dismissed with no order as to costs.

JUDGE