

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 175 OF 2017
WITH CA/15455/2017 IN SA/175/2017

LAXMAN MARUTI MACHEWAD AND ANOTHER
VERSUS
SUNITA SHIVAJI BHENDEWAD AND OTHERS

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Advocate for Appellants : Shri Nagarkar Kiran M.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 08, 2018

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PER COURT :-

1. The appellants are the original defendants, who are aggrieved by the judgment of the trial Court dated 31.1.2008 by which RCS No.139 of 2004, filed by the plaintiff / Sunita has been decreed and she has been granted 1/4th share in the suit property, which was subjected to partition and separate possession in the said suit. The appellants / defendants are also aggrieved by the judgment of the first appellate Court dated 25.9.2014, by which, RCA No.7 of 2009 has been dismissed.

2. Learned counsel for the appellants has strenuously contended that Sunita had preferred the suit for partition and separate possession on the contention that she was the biological daughter of Ram and Chandrakala. The appellants had specifically putforth the

case that Sunita was not the daughter of Ram and was in fact the daughter of Shivaji Rachewad whom Chandrakala married after the demise of Ram.

3. The appellants point out from the plaint that Sunita had claimed to be about 19 years' old when the suit was filed on 7.6.2004 and she had averred that Ram had passed away about 25 years ago. Contention is that Sunita would not be 19 years old, if she is to be the daughter of Ram and she cannot be the daughter of Ram at the age of 19 years of age, when Ram has passed away 25 years ago. It is, therefore, stated that the substantial question of law would be whether Sunita can be said to be the daughter of Ram and if not, whether she would be entitled to 1/4th share of the ancestral property, to which, Ram had a right.

4. I have considered the record available in the light of the submissions of the appellants.

5. The trial Court has recorded that Chandrakalabai, who is undisputedly the mother of plaintiff Sunita, had deposed on oath that Sunita was about 2-3 years of age, when her husband Ram passed away. Thereafter, she had remarried about few years after the death of Ram. Sunita had also deposed that she is the daughter

of Ram.

6. The trial Court, therefore, recorded that the onus and burden shifted on to the defendants, who had specifically pleaded that Sunita was not the daughter of Ram. However, no evidence at all was led to establish that Sunita is not the biological daughter of Ram and is the biological daughter of Shivaji and Chandrakalabai.

7. The first appellate Court after going through the record and proceedings concluded that if the defendants were very much sure that Sunita is not the daughter of Ram, there was no impediment for them to lead evidence to prove that Ram is not the biological father of Sunita. It was further concluded that when Sunita as well as her mother have deposed before the trial Court to establish that Ram is the father of Sunita, yet the defendants did not take any steps to disprove the said case.

8. Considering the above, I do not find any substantial question of law involved in this matter. The Second Appeal being devoid of merits, is therefore, dismissed. Pending Civil Application does not survive and stands disposed of.

(RAVINDRA V. GHUGE, J.)

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