

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 294 OF 2014
WITH
CIVIL APPLICATION NO. 752 OF 2014 IN S.A NO. 294 OF 2014

Shivaji Balku Patil

... Appellant

Vs.

Smt. Laxmibai @ Hirabai Ganpatrao

Hande (Decd.) through LRs.

Shrimati Anandibai Jaysing Hande & Ors. ... Respondents

Mr. Girish Agarwal i/b. Mr. Tushar Pimple, Advocate for the appellant.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 27th April, 2018.

P.C.

This Second Appeal is directed against the order dated 21st February, 2014 passed by the Ad-hoc District Judge-2, Kolhapur dismissing Regular Civil Appeal No. 24 of 2001 and confirming the judgment and decree dated 30th November, 2000 passed by the 9th Joint Civil Judge, Junioe Division, Kolhapur in Regular Civil Suit No. 285 of 1999.

2. The appellant is defendant no. 2. Respondent no. 1 is a plaintiff, who has filed the suit for declaration, partition and injunction against her cousins. As per the case of the plaintiff/respondent no. 1,

Rawaji Patil was the original person, who had one son Aba and Aba Rawaji Patil had 5 children, out of which, two children died issueless. The plaintiff/respondent no. 1 is a daughter of Dattu and defendant nos. 1, 3 to 5 are wife and daughters of her uncle Balku. The trial Court decreed the suit and directed that the plaintiff is entitled to get $\frac{1}{2}$ share in the ancestral property and other respondents are entitled to get remaining $\frac{1}{2}$ share jointly. The said decision was challenged by the defendants by filing Regular Civil Appeal No. 24 of 2001 and the First Appellate Court confirmed the said judgment and decree passed by the trial Court. Hence, this Second Appeal.

3. The learned counsel for the appellant/original defendant no. 2 has submitted that the decision of the trial Court and first Appellate Court holding that the plaintiff/respondent no. 1 Laxmibai alias Hirabai is a daughter of Dattu Aba Patil and granddaughter of Aba Rawaji Patil is not proved. The learned counsel submitted that the plaintiff/respondent no. 1 has produced only birth certificate to show that she is daughter of Datta Aba Patil and she did not tender any other evidence. He pointed out that a witness, namely, Pandurang Bhiva Patil, PW-2 gave admission that it is not true that Dattu is son of Aba Patil. The learned counsel submitted that the trial Court and

first Appellate Court both have erred in holding that the plaintiff Laxmibai alias Hirabai is daughter of Dattu Aba Patil.

4. Heard the submissions. To prove whether the plaintiff/respondent no. 1 is daughter of Dattu Aba Patil and granddaughter of Aba Rawaji Patil is a question of fact. The respondent no. 1/plaintiff has submitted birth certificate where name of Dattu Aba Patil is written as her father. The trial Court and Appellate Court has rightly relied on the document and her relationship with Dattu Aba Patil and Aba Rawaji Patil is proved. No substantial question of law is made out. Hence, Second Appeal is dismissed. Decree is to be drawn as per the judgment of the trial Court.

5. In view of dismissal of Second Appeal, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)