

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 98 OF 2011

Shankar Bhika Wagh & Ors

...Appellants

Versus

Parvatibai Pandharinath Jadhav & Ors

...Respondents

Ms. Kavita Tatkekar, i/b Mr. Sandip Shinde, for the Appellants.
Mr. Sachin Padaye, i/b Mr. Girish Agrawal, for Respondents
Nos.2 & 3.

CORAM: N. M. JAMDAR, J
DATED: 31 JANUARY, 2018

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The Appellants have challenged the concurrent judgments and orders passed by the learned Civil Judge, Junior Division, Nashik and the learned District Judge, Nashik, decreeing the Suit filed by the Respondents – Plaintiffs and dismissing the Appeal filed by the Appellants.
3. The Suit was filed by the Respondents – Plaintiffs seeking partition of the suit property. Plaintiff no.1 is the wife of deceased Pandharinath, and Plaintiffs nos.2 and 3 were his daughters. Defendant no.1 was also his daughter. The heirs of Defendant no.1 started claiming exclusive ownership in respect

of the entire properties, therefore a suit for partition was filed. The learned Civil Judge and the learned District Judge considered the evidence on record and recorded categorical finding that the properties were received by deceased Pandharinath in partition from his brother and were his ancestral properties. Both the Courts also took note of the fact that the parties are Schedule Tribes and therefore in view of the provisions of Section 2(2) of Indian Succession Act ("the Act", for short), they would be governed under the Act.

4. Both the Courts calculated the shares of the parties as per Section 29 (2) read with Section 33 of the Act. Once the fact is establish that deceased Pandharinath was the owner of the suit properties, the relationship of Plaintiffs and Defendant no.1 was admitted, the only question that remained was of a calculation of shares.

5. The learned Counsel for the Appellants submitted that the heirs of Defendant no.1 were in possession since the year 1986. Even that be so, that does not mean that they can deprive the legitimate share of Plaintiffs in the property of their husband / father.

6. There is no error committed by both the Courts in granting 1/3 share to Plaintiff no.1 – wife and 2/9 share to the

daughters i.e. Plaintiffs nos.2 and 3 and Defendant no.1. No substantial question of law arises. Second Appeal is dismissed.

[N. M. JAMDAR, J.]