

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

***SECOND APPEAL NO. 495 OF 2013
with
CIVIL APPLICATION NO. 719 OF 2015
with
CIVIL APPLICATION NO. 1181 OF 2013***

1. Nagu Chilu Mohite (deceased)
by his legal heirs
1A. Smt. Sarasabai Nagur Mohite
since deceased through her legal heirs
1B. Sou. Dwarakabai Maruti Yadav & Ors. ...Appellants/Applicants.

V/s.

Mahadev Ganu Mohite
since deceased through his legal heirs & Ors. ... Respondents.

Mr. N.V. Walawalkar, Senior Advocate a/w. Vikram Walawalkar and
Sambhaji Kharatmal i/b. Suresh Sabrad for the
Appellants/Applicants.

Mr. Kuldeep S. Patil for Respondents 1A to 1C, 1C-I to 1C-IV,
1D(2), 2A to 2D.

CORAM : N.M. Jamdar, J.

DATE : 30 January, 2018.

Oral Order :-

The Appellants – Original Defendant Nos.1 to 5 are
challenging the concurrent judgments and orders passed by the

learned Civil Judge, Junior Division, Vita in Regular Civil Suit No. 148 of 1984 dated 15 February 2003 and by the learned District Judge, Sangli in Regular Civil Appeal No. 78 of 2003 dated 22 April 2013. The suit filed by the Respondents – Plaintiffs for partition of the properties has been decreed and the First Appeal filed by the Appellant has been dismissed.

2. One Chinu was the ancestor in the family. He had two sons Ganu and Nagu. The Plaintiff and Defendant No.6 are sons of Ganu. The other branch i.e. the heirs of Nagu, brother of Ganu are not accepting the claim of Plaintiff and Defendant No.6 for partitioning the property, on the ground that they are not legitimate children of Ganu. The learned Civil Judge, after considering the evidence on record came to the conclusion that it could not be stated that the Plaintiff and Defendant No.6 were illegitimate children, and they were legal heirs of deceased Ganu. After holding so, the learned Civil Judge held that there was a joint family and the Plaintiff and deceased Shripati i.e. Defendant No.6 were entitled to their share in the suit property. The learned District Judge, by dismissing the Appeal has confirmed the said finding.

3. The learned Senior Advocate for the Appellants firstly submitted that there is no evidence at all to show that the marriage of Ganu with Chandrabai was legal and valid. In the birth certificates of the Plaintiff and Shripati, they have been shown as

illegitimate children. The The learned Senior Advocate submitted that merely on evidence of a Record Keeper and general circumstances it has been held that the society has treated Chandrabai and mother of the Plaintiff and Ganu as husband and wife and therefore, share in the partition has been granted. According to the learned Counsel, assessment of evidence is therefore perverse. The Learned Counsel for the Respondents supported the impugned orders.

4. Both the Courts have assessed the evidence on record and thereafter have come to the conclusion regarding the status of relationship between Ganu and Chandrabai. The Plaintiff Mahadeo and Defendant No.6 Shripati were born on 28 March 1916 and 2 December 1913. Therefore, the Courts were faced in ascertaining the status of relationship that existed between Chandrabai and Ganu almost a century ago. Both the Courts therefore adopted a holistic approach in the assessment of evidence and did not merely rely on the birth certificates. Assuming that the birth certificates referred to these two i.e. Mahadeo and Shripati as illegitimate, considering the limited object of maintaining the birth records, the other pieces of evidence in favour of the Plaintiffs could not have been brushed aside only on the basis of these certificates. Both the Courts have taken note of a record maintained by a Record Keeper in the village, who was examined by the Plaintiff. He produced a Register which was marked at Exhibit 197 in which genealogy of the families in the

localities was maintained. The Appellants have not been able to discredit the document produced, and nothing was elicited through the cross-examination. Both the Courts thereafter considered the evidence as to the recognition by the society in respect of the relationship of Ganu and Chandrabai and on the basis of this evidence inferred that there was a relationship between Ganu and Chandrabai of husband and wife. This aspect of relationship is in the realm of assessment of evidence. Both the Court have analyzed each piece of evidence and have arrived at conclusion after giving due regard to the evidentiary value of each piece of evidence. Considering the narrow scope of Section 100 of the Code of Civil Procedure, it is not possible to reverse the finding of fact regarding the existence of relationship.

4. The learned Senior Advocate for the Appellants then submitted that an application was filed on 16 March 2013 in the District Court to produce certain documents on record, amongst which there was a reply to the notice given by the heirs of Defendant No.6 Shripati to a notice issued by the Plaintiff in which the heirs of Defendant No.6 is stated to have taken a stand that neither of the parties therein have any share in the suit property. It was contended, relying on the decisions of the Apex Court in the cases of *State of Rajasthan v/s. T.N. Sahani*¹, *Sanjiv Goel v/s. Avtar S. Sandhu*² and *Harju (since deceased) through his proposed Legal*

1 (2001) 10 SCC 619

2 (2006) 9 SCC 748

*Heirs and Ors. v/s. Phulari (Smt.) Alias Churmarawati & Ors.*³ that the District Judge ought to have decided the application before finally disposing of the Appeal and by not doing so, committed a legal error. It was contended that a reply was filed and the application was dealt with on merits. The learned Counsel for the Respondents submitted that the application below Exhibit 115 dated 16 March 2013 is not an application at all.

5. I have considered the rival submissions on the above issue. Since the Appellants were trying to produce some documents for the first time in Appeal, the Appellants had to demonstrate that they could not have been produced them earlier, inspite of due diligence. The fact that the Appellants could not have produced these documents earlier and the reasons for not doing so, had to be stated on affidavit by the Appellants. Exhibit 115 is a mere one page list of documents signed by the Advocate. As rightly contended by the learned Counsel for the Respondents, this is not an application for production of additional evidence, but a simple list of documents sought to be tendered. In the reply filed, the Respondents have taken a stand that what is tendered is not an application in its correct format. Though thereafter, the Respondents have contended that these documents should not be taken on record pursuant to the application, the fact remains that the list under Exhibit 115 is not an application for additional evidence as required by law. Since it was

3 (2005) 10 SCC 191

not an application for producing additional documents, the decisions cited by the learned Counsel for the Appellants will not assist the Appellants. It is not that the party can produce new documents in the appeal as a right, but must make out case and for that purpose by a proper application giving reasons has to be filed. Exhibit 115 is no such application.

6. In these circumstances, no substantial question of law arises for consideration. The Second Appeal is dismissed. The Civil Applications stand disposed of accordingly.

7. At the request made on behalf of the Appellants, ad-interim relief granted in the Appeal is continued for a period of six weeks from the date the order is uploaded.

(N.M. Jamdar, J.)