

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.374 OF 2018
ALONG WITH
CIVIL APPLICATION NO.884 OF 2018

Kishore Tulshiram Mantri	 Appellant-Applicant
V/s.	
Dilip Janak Mantri and Ors.	 Respondents

Mr. Girish R. Agrawal for the Appellant-Applicant.

Ms. Seema Sarnaik for Respondent Nos.1 and 2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH AUGUST, 2018.

P.C. :

1. Heard Mr. Agrawal, learned counsel for the Appellant, and Ms. Sarnaik, learned counsel for Respondent Nos.1 and 2.

2. Original Defendant No.8 has preferred this Second Appeal, challenging the 'Judgment and Decree' dated 3rd March 2017 passed by the Ad-Hoc District Judge-1, Nashik, thereby dismissing the Civil Appeal No.442 of 2016, which was preferred against the 'Judgment and Decree' dated 27th November 2014 passed by the Civil Judge, Senior Division, Nashik, in Special Civil Suit No.575 of 2010.

3. The said Suit was filed by Respondent Nos.1 and 2 for partition and separate possession of their share in the suit properties. The suit properties are the self-acquired properties of 'Tulshiram', the father of Respondent No.2, who has died on 27th May 1975, leaving behind the Appellant and Respondent No.2 as his legal heirs. It is undisputed that, by executing a 'Release Deed' dated 30th January 2011, Defendant Nos.1, 3 and 4 have relinquished their share in the suit properties in favour of Plaintiff-Respondent No.2. Similarly, by executing another 'Release Deed' dated 29th August 2012, Defendant No.5, i.e. Respondent No.8 herein, has also relinquished her share in favour of Respondent No.2.

4. The only contention, which was raised by the Appellant herein before the first Appellate Court, was that the suit properties being the ancestral joint family properties, the relinquishment of the share cannot be in favour of one person, but it should be in favour of whole body. In this respect, learned counsel for the Appellant has relied upon Article 264(1) of the Mulla's 'Principles of Hindu Law', which is explained in the Judgment of the Full Bench of the Madras High Court in the case of *Chella Subbanna and Anr. Vs. Chella Balasubbareddi and Ors., AIR 1945 Madras 142*, observing as follows :-

“A member of a joint Hindu family, governed by the Mitakshara Law, cannot give his interest in the family estate to one of several coparceners, if they remain joint in estate. In such circumstances, he can

relinquish his interest, but the relinquishment operates for the benefit of all the other members.”

5. Learned counsel for the Appellant has also relied upon the Judgment of the Hon'ble Apex Court in the case of *Thamma Venkata Subbamma Vs. Thamma Rattamma*, AIR 1987 SC 1775, particularly paragraph No.20 of the said Judgment, wherein also the same principle laid down in Article 264 of the Mulla's 'Principles of Hindu Law', relating to relinquishment of the share by a coparcener in favour of another coparcener is considered and it was held that, “*such relinquishment can be in favour of the whole body and cannot be particularly in favour of a particular coparcener*”.

6. It must be stated that, both these authorities were cited before the first Appellate Court and the first Appellate Court has considered them in the light of the Judgment of this Court in the case of *Parvatibai @ Laxmibai w/o. Annaji Patil Vs. Baburao Ganu Kanade (Dead)*, through *LRs.*, 2015 BCJ 232, and held that, in order to attract the law laid down in both these Judgments, it has to be proved that the suit properties are coparcenery or ancestral joint family properties. Here in the case, it has been rightly held by the first Appellate Court that, the suit properties are neither the coparcenery, nor the ancestral joint family properties in that sense; because, they were the self-acquired properties of 'Tulshiram', the father of the Appellant and Respondent No.2. Hence, the Judgments

relied upon by learned counsel for the Appellant cannot take his case any further.

7. The next submission of learned counsel for the Appellant is that, the first Appellate Court has, in respect of these properties, relied upon the Judgment of the Hon'ble Apex Court in the case of *Uttam Vs. Saubhag Singh and Ors.*, 2016 DGLS (SC) 146, which cannot be made applicable to the present case, as the law laid down therein is different than the one considered by the first Appellate Court in the present case. It is submitted that, the facts of the said case, as explained in paragraph No.15 of the said Judgment, are totally different than the facts of the present case and hence, it was not proper on the part of the first Appellate Court to rely upon the said Judgment. Conversely, the principles laid down in paragraph No.20 of the said Judgment make it clear that,

“In order to determine the share of the Hindu male coparcener, who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property. On the application of Section 8 of the Act, either by reason of the death of a male Hindu, leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.”

8. Here in the case, it is urged that, the first Appellate Court has held

that, while deciding the shares of legal heirs of deceased 'Tulshiram', Section 8 of the Hindu Succession Act, 1956, will have to be made applicable and all the legal heirs will get equal share. Therefore, according to learned counsel for the Appellant, the conclusion arrived at by the first Appellate Court is not legal and proper.

9. However, in my considered opinion, as rightly held by the first Appellate Court, here in the case, the properties were, admittedly, the self-acquired properties of 'Tulshiram' and, therefore, as they are not the ancestral coparcenary properties as such, on his death, they will devolve equally on all his legal heirs and, therefore, some of the legal heirs can definitely relinquish their share in favour of another legal heir and it should not be necessarily in favour of whole body.

10. Thus, the substantial question of law, which is tried to be raised in the present case, being properly answered and considered by the first Appellate Court, there remains nothing to be further decided. Therefore, the Second Appeal stands dismissed.

11. In view of the dismissal of the Second Appeal, Civil Application No.884 of 2018 pending therein does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]