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

**SECOND APPEAL NO.779 OF 2017
WITH
CIVIL APPLICATION NO.1531 OF 2017
IN
SECOND APPEAL NO.779 OF 2017.**

Madhavrao Devendra Hegade ... Appellant.
V/s.

Jagdish Devendra Hegade and
others ... Respondents

Mr. Pramod N. Joshi, a/w Mr.Pratik B. Rahade, for the
appellant.

Ms. Surbhi Kulkarni I/by Abhijeet Desai, for
respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th JULY, 2018.

P.C. :

1] This appeal takes an exception to the judgment and decree dated 12.4.2017, passed by the District Judge-2, Solapur in Civil Appeal No.155 of 2012, which was preferred against the judgment and decree dated 09.02.2016, passed by the 5th Joint Civil Judge Senior Division, Solapur, in Regular Civil Suit No.11 of 1992.

2] The said suit was filed by the respondents for partition and separate possession of their shares in the residential house property and for settlement of accounts of the family business.

3] The appellant, who is original defendant No.1, has resisted the suit, mainly on the count that the respondent No.2 being the married daughter, she has no right to claim a share or partition in the residential house and secondly the business premises were tenanted premises and they are already returned to the landlord. Therefore, there is no question of seeking any partition in the same business, especially having regard to the admissions given by the respondent that the business was exclusively run by the appellant herein. Hence it is submitted by learned counsel for appellant that both Courts while deciding this issue have committed an error in decreeing the suit.

4] However, in my considered opinion, both the Courts below have considered these contentions in the light of legal position and held that in view of amendment to section 6 of the Hindu Succession Act 1956, even a married daughter is conferred the status of a co-parcener by birth and therefore, she is entitled to get partition in all the properties in which brothers are entitled to seek partition and get share. The rights of daughter are now equal like that of her brothers.

5] Herein in the case, moreover, in view of deletion of Section 23 of the Hindu Succession Act, which dis-entitled a daughter from seeking partition in the dwelling house, respondents though are married daughters, are also entitled to get partition in the said

property. Moreover, original plaintiff No.1, who is real brother of appellant is seeking partition and share in the residential house, hence when a male member is seeking partition of dwelling house, the married daughters or married sisters are also entitled to get their share and separate possession in the dwelling house. There is no substantial question of law as such raised on this aspect, as the legal position in this respect is fairly well settled,

6] Even as regards the second contention, it is undisputed position that the business in the name “Balaji Vishranti Gruha” was initially run by the father of the appellant and respondents viz. Devendra. It was a joint family business of the parties and therefore, even if business premises are returned by the appellant, by virtue of compromise arrived at between him and the land lord in the Court proceeding, so far as the accounts of the said business, considering the actual assets of the movable property and the goodwill of the business, respondents are entitled to get their share in the said earning. Accordingly the trial Court and Appellate Court have concurrently held to that effect.

7] As regards the submission that respondent, who is married daughter has given several admissions that the licence of the said business stands in the name of appellant and he was looking after the business of joint family since time of the father. It is clear

that after the death of their father, the appellant being the elder, was inducted in the business, hence the licence was transferred in his name. That cannot be sufficient reason to deny respondents, who are legal heirs having their share in the assets and income of the said business. Therefore, to ascertain the capital of Balaji Vishranti Gruha, its goodwill, assets of movable property, the trial Court and Appellate Court have appointed the Court Commissioner. There is nothing illegal in the said order of the trial Court and the Appellate Court so as to interfere in the Second Appeal.

8] The Second Appeal, therefore, being without merit stands dismissed.

9] In view of dismissal of Second Appeal, Civil Application No.1531 of 2017 being infructuous stands dismissed accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]