

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

**APPEAL FROM ORDER NO.207 OF 2017
with
CIVIL APPLICATION NO.281 OF 2017**

Suresh Shankar Kondye ... Appellant

Vs.

Chandrakant Rajaram Kondye & Ors. ... Respondents

Mr.A.H. Palekar for the Appellant
Mr.Yashodhan Ghavankar for Respondent No.1
Mr.S.M. Dange for Resp. Nos.3 to 5, 6A to 6C, 7 to 9

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: FEBRUARY 5, 2018**

P.C. :

1. This Appeal from Order is directed against the order dated 12.7.2016 passed by the learned Ad-hoc District Judge - 1, Sindhudurg at Oros in Regular Civil Appeal No.12 of 2011. The present appellant is the original plaintiff, who has filed Suit for declaration, partition and separate possession. The suit was decreed partly against which the Regular Civil Appeal was filed by the original defendant Nos.1 and 2, in which the learned Adhoc District Judge, Sindhudurg at Oros, on hearing the appeal, found that the original owner Narayan had four children, namely, Shankar

Gangaram, Rajaram and Sadashiv. The plaintiff/appellant is from the branch of Shankar and the defendants/respondents are from the branch of Rajaram. The appellate Court found that Ganagaram was not made party to the suit, who is survived by his son Praveen and other heirs. The appellate Court, therefore, remanded the matter on the point of non-joinder of necessary parties as the suit was for partition and the trial Court held that the suit property is a joint Hindu family property.

2. Heard submissions. I am of the view that the order passed by the appellate Court that Gangaram is a necessary party is correct and the order of remand, therefore, cannot be faulted with.

3. The learned Counsel for the appellant submits that the issue that the property is a joint Hindu family property is concluded by the learned trial Judge and on that point, both the parties have tendered their respective evidence – oral as well as documentary. Hence, the said issue is not to be reopened but it can be again argued before the appellate Court in Appeal.

4. The learned Counsel for the respondent confirms that both the parties have tendered their respective evidence.

5. In view of this submission, the order passed by the appellate Court of remanding and setting aside the judgment and decree of the trial Court in R.C.S. No.112 of 2003, is maintained with following modifications:

- i) As the parties have tendered evidence, they are not to be troubled again to stand in witness box and give evidence;
- ii) The parties are allowed to tender their further evidence in view of the written statement of proposed defendant and additional issues framed, if any, thereafter if it is required. The trial court to read the evidence of both the parties in the fresh trial;
- iii) Issue No.(1) is not to be opened and reagitated unless Gangaram gives challenges to this issue;
- iv) The parties are allowed to file additional written statements;
- iv) The plaintiff to amend the plaint accordingly by adding the legal heirs of Gangaram and consequential amendments in the plaint.

v) A statement is made at bar, on instructions, that Sadashiv and his sole legal heir i.e., his daughter, died issueless prior to the filing of the suit and, therefore, it is not necessary to make them party to the suit. On this point, the plaintiff shall file an affidavit / amendment application in the trial Court;

vi) The trial Court to proceed with the matter and shall decide the same on or before 31.12.2018.

6. Appeal is disposed of accordingly.

7. Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)