

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.283 OF 2017

Balwant Shamrao Kurekar
And Anr.

... Appellants

-vs-

Kavita @ Maya Kavish More
And ors.

... Respondent.

Shri A. P. Thakare, Advocate for appellants.

Shri N. R. Bhishikar, Advocate for respondent Nos.1 and 4.

CORAM : A.S.CHANDURKAR, J.

DATE : February 16, 2018

P.C.

This appeal has been filed by the original defendant Nos.5 and 6 who are aggrieved by the decree for partition and separate possession that is passed by the trial Court which has been confirmed by the first appellate Court.

2. According to the respondent No.1-plaintiff she is the daughter of one Shyamrao Kurekar while defendant Nos.3 and 6 are her brothers and defendant No.7 to 11 are the legal heirs of another deceased brother. It is her case that the suit properties were acquired by Shyamrao and therefore after his death she had acquired share in the suit property. According to

the defendants it was denied that the plaintiff had any share in the suit property. It was contended that the properties were ancestral in nature and therefore no relief could be granted to the plaintiff.

3. After the parties led evidence the trial Court held that the suit properties were the self acquired properties of Shyamrao. It therefore granted a share to the sons and daughters of Shyamrao. The appellate Court confirmed this decree.

4. It is submitted on behalf of the appellants that the original plaintiff in her deposition at Exhibit-49 had admitted that the suit properties were ancestral in nature and therefore this admission could not have been ignored by both the Courts. Reference was also made to the deposition of defendant No.4 in that regard.

5. The learned counsel for the respondents submitted that it has been found that the suit properties were self acquired properties of Shyamrao. The 7/12 extract showed the name of Shyamrao initially and after his death the names of his legal heirs were mutated. No objection was taken to these entries and therefore the suit was rightly decreed.

6. On perusing the impugned judgment and the evidence on record it

can be seen that after the death of Shyamrao in the year 1991 the names of the legal heirs were entered in the 7/12 extract. The fact that during his life time the entry of the name of Shyamrao alone was shown indicates that it was his self acquired property. This finding has been given by the trial Court and confirmed by the first appellate Court. In the light of the evidence on record the admission of the original plaintiff as recorded in Exhibit-49 by itself cannot change the character of the suit properties.

7. I find that both the Courts have taken into consideration the relevant evidence and have granted share to each legal heir. No perversity is found in the said adjudication. The second appeal does not give rise to any substantial question of law. Same is therefore dismissed. No costs.

JUDGE