

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 457 of 2017
[Smt. Neeta Devidas Chikate & two others Vs. Sau. Lilabai Sakharam Chikate]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. A. V. Muley, Adv., for the appellants.
Mr. S. A. Chaudhari, Adv., for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : 08th January, 2018

The original defendants are aggrieved by the decree for partition and separate possession passed by the trial Court in the suit filed by the respondent which decree has been confirmed by the appellate Court.

One Sakharam was married with the plaintiff - Lilabai. They had a son - Devidas. On 25th April, 1988, Sakharam purchased an agricultural land. On 2nd March, 1993, there was a partition between Sakharam, the plaintiff and their son - Devidas. Devidas expired on 21st November, 2006. The plaintiff filed a suit for partition and separate possession of a field property as well as a house that belonged to Devidas. The defence raised was that in the earlier partition of 1993, the plaintiff had received her share and, therefore, she was not entitled to any further share in the property. The

trial Court decreed the suit and granted the plaintiff 1/4th share. The first appellate Court has confirmed the said share.

The learned counsel for the parties have been heard on the following substantial question of law:-

“Whether the share of the plaintiff to the extent of 1/4th share has been rightly carved out in the light of provisions of Section 10 of the said Act?”

Shri A. V. Muley, learned counsel for the appellants – defendants, submitted that in view of earlier partition dated 2nd March, 1993 in which the plaintiff was granted a share in various properties, she was not entitled for any share in the properties belonging to Devidas. It is only the widow and children of Devidas who had exclusive share in the suit property. The suit was, therefore, liable to be dismissed.

Shri S. A. Chaudhari, learned counsel for the respondent-plaintiff, submitted that by virtue of provisions of Section 10 of the Hindu Succession Act, 1956, the mother of Devidas was entitled to one share which was rightly granted by the trial Court and upheld by the appellate Court. Merely because in earlier partition, the plaintiff had received her share would not be a reason to dismiss the suit.

Having heard the learned counsel for the parties and having perused the impugned judgments, it is found that in view of provisions of Section 10 of the said Act, the plaintiff as mother of the deceased would be entitled to claim 1/4th share in the suit property which has been granted by the trial Court. Devidas was survived by his widow and two children who have also been granted 1/4th share each. Merely because in the earlier partition dated 2nd March, 1993, some other property was granted to the plaintiff cannot be the reason to dismiss the suit, especially when under Section 10 of the said Act, the plaintiff was entitled for one share in the property of the son who expired intestate.

Accordingly, the substantial question of law as framed is answered by holding that the share of the plaintiff has been rightly carved out. There is no case made out interfere in the Second Appeal, which is accordingly dismissed with no order as to costs.

Judge