

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

SECOND APPEAL NO.218 OF 2017

Ramkrushna s/o Anandrao Bende ... Appellant

-VS-

Kaushal w/o Ashok Dhote and ors. ... Respondents.

Shri P. D. Randive, Advocate for appellant.

Shri P. K. Mishra, Advocate for respondent Nos.1 and 2.

CORAM : A.S.CHANDURKAR, J.

DATE : August 13, 2018

P.C.

The appellant is the original defendant in the suit for partition and separate possession filed by the respondents herein.

It is the case of the plaintiffs that they are the daughters of one Anandrao who had married with one Tulsibai. The plaintiffs are their three daughters while the defendant is their son. According to the plaintiffs their father expired in the year 1971 after which the names of the mother and children were mutated in the revenue records. However, after the death of mother only the name of the defendant was mutated. It is their case that the defendants sought to get a relinquishment-deed executed from the plaintiffs which was not legal. Part of the property was sold by the defendant in the year 1994. As the plaintiffs had share in the suit property and they had right

pursuant to the family arrangement they filed the aforesaid suit for partition and separate possession.

2. In the written statement the case as pleaded was denied. It was denied that there was any family arrangement in the year 1985. On the contrary in 1982-83 the plaintiffs had orally relinquished their right and interest in the property and a document was got executed. It was further stated that the defendant was in exclusive possession for more than 24 years and the suit was therefore liable to be dismissed.

3. After the parties led evidence, the trial Court recorded a finding that by virtue of oral and mutual arrangement in the year 1985 the plaintiffs had share in the property. The documents relied upon by the defendant were not produced and hence his case was not accepted. The suit was partly decreed granting the plaintiffs 5/16th share in the suit property and 1/16th share to the defendant. Being aggrieved the defendant filed an appeal and the appellate Court confirmed the aforesaid judgment. Hence the present second appeal.

4. Shri P. D. Randive, learned counsel for the appellant submitted that in view of the fact that the father had expired in the year 1971 the provisions of Section 6 of the Hindu Succession Act, 1956 as amended would not give any

right to the plaintiffs to claim a share in the suit property. The requirement was that the co-parceners and the father should have been alive when the amendment was brought in force. Placing reliance on the decisions in *Mangammal @ Thulasi and anr. vs. T. B. Raju and ors.* 2018(4) ALL MR 941 (SC) and *Kishore Morarji Bhojraj and anr. vs. Jaya Hiranchand Karani and ors.* 2017(3) Mh.L.J. 909 it is submitted that the requirements of Section 6 of the said Act as amended were not satisfied and therefore both the Courts committed an error in decreeing the suit. It was submitted that according to the plaintiffs themselves the property was ancestral in nature. Hence this aspect gave rise to a substantial question of law.

5. Shri P. K. Mishra, learned counsel for the respondents supported the impugned judgment. According to him by virtue of a family arrangement in the year 1985 the mutation entries were effected showing the names of the plaintiffs. The provisions of Section 8 of the said act would be applicable considering the nature of the suit property. It was not the case of the defendant that in view of the nature of the suit property the provisions of Section 6 of the said Act would apply and this aspect was being raised for the first time in the present appeal.

6. Heard the learned counsel for the parties and perused the pleadings, evidence and the impugned judgment. As per the averments in the plaint it

has been pleaded that the suit property was initially owned by the father Anandrao and after his death, the names of all legal heirs were mutated. In the year 1985 there was a family arrangement on the basis of which the right in favour of the plaintiffs was created. However, the defendant was relying upon the relinquishment deed which had no legal entity. In the written statement the aforesaid case has been stated. The evidence on record indicates that in the year 1985 there was a family arrangement pursuant to which land bearing Survey No.54 was allotted to the plaintiffs and their mother. Survey No.85 was allotted to the defendant and the record of rights were corrected. However, after the death of the mother the names of the plaintiffs were deleted without any legal basis as per Exhibit-52. It has been held by both the Courts that there was sufficient evidence to indicate the said family arrangement by virtue of the entry at Exhibit-32 and the deed of relinquishment put forward by the defendant was not proved. Moreover, the defendant in 1985 had sold off Survey No.85 that was allotted to him.

In so far as the applicability of provisions of Section 6 is concerned, this plea was not raised either before the trial Court or before the first appellate Court. There is no evidence on record to indicate that prior to Anandrao his ancestors had purchased or acquired the suit property. The Courts have therefore applied the provisions of Sections 8 and 14 of the said Act for granting share to all the legal heirs of deceased Anandrao. In that view of the matter the decisions relied upon the by learned counsel for the

appellant do not support his contentions in the aforesaid facts.

In view of aforesaid it is not found that the appeal gives rise to any substantial question of law. Same is therefore dismissed with no order as to costs.

JUDGE

Asmita