

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
AURANGABAD BENCH, AT AURANGABAD.**

**Second Appeal No. 0208 of 2019**

District : Dhule

1. Ananda Rajaram Patil,  
Age : Major,  
Occupation : Agriculture,  
R/o. Kundane [Velhane],  
Taluka and District Dhule.

2. Sau. Subhadra Ananda Patil,  
Age : Major,  
Occupation : Agriculture,  
R/o. Kundane (Velhane),  
Taluka and District Dhule.

.. Appellants  
(Original  
defendants)

**versus**

Chhababai Devram Patil,  
Age Major,  
Occupation : Agriculture,  
R/o. Kundane (Velhane),  
Taluka and District Dhule.

.. Respondent  
(Original  
plaintiff)

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*Mr. N.L. Choudhari, Advocate, for the appellants.*

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 01ST APRIL 2019**

**ORAL ORDER :**

01. Present appeal has been filed by the original defendants challenging the judgment and decree passed in Civil Appeal No. 103 of 2011 by District Judge-2, Dhule, dated 03-04-2018, whereby

their appeal came to be dismissed. In the said appeal, they had challenged the judgment and decree passed in Regular Civil Suit No. 223 of 2008 by 4th Joint Civil Judge (Junior Division), Dhule, dated 02-09-2011, wherein the suit for partition and separate possession filed by the present respondent came to be decreed.

02. Parties are referred to by their nomenclature before trial Court.

03. What is not in dispute, that the plaintiff and defendant no.01 are real sister and brother. Further, it is not in dispute that their father Rajaram was the owner of suit house and open space around it, bearing Grampanchayat property no. 47 admeasuring 50 ft. X 30 ft., Grampanchayat property no. 21 admeasuring 55 ft. X 24 ft. situated at village Kundane (Velhane) and agricultural lands bearing Gut No.112/2 admeasuring 1 hectare 50 R, Gut No.239/1-2, new Gut no. 108/1-2 admeasuring 0.35 R, Gut no.106/3 admeasuring 0.90 R, Gut no.51/1-2 (old Gut no.182/1-2) admeasuring 0.64 R situated in the same village. These were the ancestral properties. Rajaram expired on 01-08-2007. Rajaram's widow i.e. mother of plaintiff and defendant no.1 predeceased Rajaram. After death of Rajaram, name of plaintiff as well as defendant was mutated to Gut no. 112/2, whereas name of defendant no.01 only was mutated to

other suit properties. There is no partition between plaintiff and defendant no.01. Plaintiff also contended that she was married to a person from Juwardi, Taluka Bhadgaon, District Jalgaon. However, she is living separately from her husband and children. Under those circumstances, she prayed for partition and separate possession of her share from the suit properties.

04. The claim of the plaintiff was resisted by both the defendants. Defendant no.02 is the wife of defendant no.01. It has been contended that the plaintiff was married 1971. Her husband was addicted to gambling. Thereafter she resided with defendant for about ten years since the husband was not maintaining her. But thereafter she brought her husband also and then they resided with defendants for about 4 to 5 years. Defendants had sold out one house i.e. Grampanchayat property no.161 which had come to the share of deceased Rajaram. It was sold to one Machhindra Patil and out of that consideration amount, they have given a house admeasuring 50 ft. X 30 ft. for residence to plaintiff. That property is in her possession. It was agreed at that time, that she will not claim any share in other properties. It has also been contended that defendant no.01 is hard working person and he has purchased Gut no.51/1-2 and defendant no.02 has purchased Gut no.106/3 and Gut no.108/1-2 out of their own separate income. They

are not the ancestral properties.

05. Taking into consideration the rival contentions, issues came to be framed. Parties led oral as well as documentary evidence. After considering the evidence on record, learned trial Court has held that all the properties are the ancestral properties and plaintiff and defendant no.01 have half share each in the suit properties.

06. The original defendants, as aforesaid, challenged the said judgment and decree in Civil Appeal No. 103 of 2011 and after hearing both sides, the said appeal has been dismissed. Hence, the present second appeal.

07. Heard Mr. N.L. Choudhari, learned Advocate appearing for the appellants.

08. Taking into consideration both the judgments as well as the submissions, it is not even necessary to issue notice to the respondent. The main contention that was raised on behalf of the appellants is that the defendants have developed the ancestral properties, so also, they had incurred expenses for maintaining old aged parents. Plaintiff never contributed to the joint family property nor to the liability. Under such circumstance, whether she would be entitled to get equal share. It was also

tried to be contended that both the Courts have not appreciated the evidence properly taking into consideration that some of the properties are self-acquired properties of defendant no.01 and defendant no.02.

09. As regards the nature of the properties are concerned, both the Courts on the facts based upon the evidence that was led have come to the conclusion that the defendants have failed to prove that some of the properties are the self-acquired properties. As regards Grampanchayat property no.161 is concerned, defendants had contended that they had sold the property which had come to the share of father to one Machhindra Patil and then had purchased that property which has then been given to plaintiff. However, plaintiff had brought on record evidence that Grampanchayat property no.161 was given to her by Grampanchayat. Defendants did not produce any documentary evidence to show that the house which came to the share of Rajaram was sold to Machhindra Patil. Therefore, that nexus is also not proved by the defendants and, therefore, defendants cannot ask for partition of Grampanchayat property no.161 which in the alternative they had claimed. Defendants no.01 and 02 have also not produced proper evidence to prove that some of the properties are self acquired properties, that means, purchased from their independent income. Therefore, definitely, both the

Courts were justified in holding the suit properties as ancestral properties of plaintiff and defendant no.01.

10. Rajaram expired on 01-08-2007 and the suit has been filed on 03-07-2008. Under such circumstance, the law as per the amended Section 06 i.e. amendment in 2005 to the Hindu Succession Act has been properly made applicable by both the Courts. The contention that defendants developed the property and incurred expenditure, so also, they have incurred expenditure in maintaining the parents cannot be considered here. Definitely being daughter, the plaintiff had the liability to maintain parents but that does not disentitle her or take away her right in the properties. Therefore, there is no substantial question of law to be framed on that count.

11. As no substantial question of law has been shown, which is sine qua non for second appeal under Section 100 of C.P.C., the appeal is disposed of as **'not admitted'**.

**( Smt. Vibha Kankanwadi )**  
**JUDGE**

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