

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**SECOND APPEAL NO.87 OF 2017
WITH
CA/1605/2017 IN SA/87/2017**

1. Yamunabai w/o Narayan Dandwate,
Aged about : 70 years, Occ.Household,
R/o Sakuri Tq. Rahata Dist.Ahmednagar.
2. Deepak s/o Narayan Dandwate,
Aged about : 35 years, Occ.Agriculture,
R/o Sakuri Tq. Rahata Dist.Ahmednagar.
3. Sheetal d/o Narayan Dandwate,
Aged about : 29 years, Occ.Household,
R/o Sakuri Tq. Rahata Dist.Ahmednagar. ...Appellants.
(Ori.Defts.)

VERSUS

1. Mandabai w/o narayan Dandwate,
Aged about : 66 years, occ.Household,
R/o Sakuri Tq. Rahata Dist.Ahmednagar.
2. Surekha w/o Vitthal Dabhade,
Aged about : 48 years, Occ.Household,
R/o Nandurkhi Tq. Rahata Dist.Ahmednagar.
3. Ganga w/o Keshav Chamal,
Aged about : 45 years, Occ.Household,
R/o Karanji Tq. Kopargaon Dist.Ahmednagar.
4. Kalpana w/o Appasaheb Wagh,
Aged about : 42 years, Occ.Household,
R/o Vadala Mahadev Tq.Shrirampur
Dist.Ahmednagar.
5. Sulochna w/o Kishor Aher,
Aged about : 38 years, Occ.Household,
R/o Pravaranagar Tq. Rahata
Dist.Ahmednagar.
6. Prithvi s/o Harischandra Sable,

Aged about : Major, Occ.Agriculture,
R/o Rahata Tq. Rahata Dist.Ahmednagar. (Ori.Plffs.)

7. Anita w/o sunil Chine,
Aged about : 37 years, Occ.Household,
R/o Pathare Tq. Sinner Dist. Nashik.

8. Sunit w/o Balasaheb Kolhe,
Aged about : 33 years, Occ.Household,
R/o Kolhewadi Tq. Sangamner
Dist.Ahmednagar. ...Respondents.
(Ori.Defts.)

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Advocate for Appellants : Mr. V. I. Thole.
Advocate for Respondents No.1 to 6 : Mr. V. H. Dighe.
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CORAM : SMT.VIBHA KANKANWADI, J.
Date : 10-07-2019.

ORDER :

1. Present appeal has been filed by the original defendants challenging the concurrent Judgment and decree passed in Regular Civil Appeal No.21 of 2013, by learned District Judge-2, Kopargaoon Dist. Ahmednagar, dated 20-06-2016, whereby the Judgment and decree passed by learned Joint Civil Judge, Junior Division, Rahata Dist. Ahmednagar, in Regular Civil Suit No.560 of 2005, dated 31-01-2013 came to be confirmed.

2. The present respondents No.1 to 6 had filed the said suit for partition and separate possession. It was partly decreed. Plaintiffs No.1 to 6 and defendants No.2 to 5 were granted 1/10th share in the suit properties. The said decree passed by the learned Trial Court has been maintained by the learned First Appellate Court, hence this

second appeal.

3. Heard learned advocate Mr. V. I. Thole for appellants and learned advocate Mr. V. H. Dighe for respondents No.1 to 6. Both of them have vehemently submitted arguments in support of their respective cases.

4. At the outset it can be said that, since there is concurrent finding and decree against the present appellants passed by both the Courts below, this Court would be slow in interfering with the same. The second appeal is filed under Section 100 of Code of Civil Procedure, and therefore, framing of substantial question of law is *sine qua non*. Taking into consideration the catena of Judgments of the Hon'ble Apex Court on the point, as to what could be the substantial question of law, it is now required to be seen as to whether case is made out for framing any substantial question of law in this case.

5. It was challenged by the defendants that, plaintiff No.1 is the wife of deceased Narayanrao and plaintiffs No.2 to 6 are their children. In fact, the defendant No.1 had come with a case that, she got married to Narayanrao and from the said wedlock with Narayanrao, she has got defendants No.2 to 5, and therefore, the issues were framed and burden was placed on plaintiff No.1 to prove that, she is the legally wedded wife of Narayanrao. Therefore, both

of the have led evidence as well as produced documentary evidence on record. Taking into consideration the evidence adduced orally as well as documentary, both the Courts have held that, plaintiff No.1 got married to Narayanrao in the year 1958 whereas defendant No.1 could show that the children i.e. defendants No.2 to 6 are born after 1962. The admissions were considered. Though it is a fact that, the children are born to Narayan, the question was, amongst the plaintiff No.1 and defendant No.1 who can be said to be the legally wedded wife, and therefore, taking into consideration the evidence on record, it was held that, plaintiff No.1 is the legally wedded wife. But the evidence regarding marriage between Narayanrao with defendant No.1 was not accepted. No fault can be found in assessment of the said evidence taking into consideration the fact that, it was arrived at after considering the School Leaving Certificates of the children wherein their birth dates were mentioned, so also on the basis of evidence of the witnesses and admission given by the defendant No.1.

6. Further on the basis of the evidence it has been held by the learned Trial Court that, the suit properties are the joint Hindu family properties of Narayanrao which he had got in the partition with his father and brothers. Therefore, taking into consideration these aspects, the children have been given 1/10th share each in the suit property. No fault can be found in the said apportionment of shares

also given to plaintiffs. Now as regards the share that has been given to the illegitimate children is concerned, at this stage the position of law is that, the point is still pending before the Larger Bench of the Hon'ble Apex Court and the said decree in this case given by the Trial Court was not challenged by the original plaintiffs. Under such circumstance, no substantial question of law can be said to arising in this case. Hence, the second appeal stands disposed of as not admitted. Pending civil application stands disposed of accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.