

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

Second Appeal No. 0137 of 2019

District : Ahmednagar

1. Baburao s/o. Ramchandra Aher,
Age : 81 years,
Occupation : Nil,
R/o. Bhramhangaon,
Taluka Kopargaon,
Dist. Ahmednagar.
2. Savitrabai w/o. Baburao Aher,
Age : 76 years,
Occupation : Nil,
R/o. Bhramhangaon,
Taluka Kopargaon,
Dist. Ahmednagar.

.. Appellants
(Original
defendants
no.01 & 02)

versus

1. Sau. Manisha w/o. Sopan Aher,
Age : 35 years,
Occupation : Agriculture,
R/o. C/o. Sharad Shivram
Paithankar,
At Post Nagarsul,
Taluka Yeola,
Dist. Nashik.
2. Bhagyashree Sopan Aher,
Age : 18 years,
Occupation : Education,
R/o. C/o. Sharad Shivram
Paithankar,
At Post Nagarsul,
Taluka Yeola,
Dist. Nashik.

.. Respondents
(Original
plaintiffs)

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*Mr. Abasaheb D. Shinde, Advocate, for the
appellants.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27TH FEBRUARY 2019

ORAL ORDER :

01. Present appeal has been filed by defendants no.01 and 02 challenging the judgment and decree passed in Regular Civil Appeal No. 007 of 2017 by learned District Judge-2, Kopargaon, dated 03-08-2018, whereby their appeal came to be dismissed. In the said appeal, present appellants had challenged the judgment and decree passed in Regular Civil Suit No. 490 of 2012 by learned Joint Civil Judge (J.D.), Kopargaon, District Ahmednagar, dated 14-12-2016.

02. Present respondents are the original plaintiffs. They had filed the said suit under Sections 19 and 21 of the Hindu Adoption and Maintenance Act, for maintenance from the defendants. The relationship between the parties is not denied. Defendants no.01 and 02 are the father-in-law and mother-in-law of plaintiff no.01. Plaintiff no.01 got married to Sopan, who was the son of defendants, on 26-03-2002. Plaintiff no.02 is daughter of Sopan and plaintiff no.01. Sopan expired on 18-02-2004. According to the plaintiffs, after some days from the death of Sopan, defendants drove plaintiffs out of their house. However, at that time, gold ornaments of plaintiff no.01 were kept by defendants with them. Since then, plaintiffs are residing at village

Nagarsul with the father of plaintiff no.01. It is stated that there is no source of income for the plaintiffs. Defendant no.01 is the Karta of the joint family. There were agricultural lands bearing Gut no.58 admeasuring 1 hectare 82 R, Gut no.70 admeasuring 3 hectares 19 R, Gut no.56 admeasuring 1 hectare 21 R, Gut no.68 admeasuring 2 hectares 5 R and Gut no.67/1 admeasuring 1 hectare 6 R. All are situated at village Brahmangaon, Taluka Kopargaon, District Ahmednagar. All the suit lands are in possession of the defendant and he is taking income from the same. The family is also having house property bearing no.493 at the said village. It is also stated that the suit lands are irrigated lands and the defendants are getting income of around Rs. 3,00,000/- to 4,00,000/- per year. Plaintiff no.02 is taking education and, therefore, they had prayed for grant of maintenance at the rate of Rs.10,000/- per month from the defendants. They had also prayed for keeping charge on the suit lands as well as suit house.

03. The defendants filed written statements and resisted the claim of the plaintiffs. It is denied that all the suit properties are ancestral properties and defendant no.01 is the Karta of the joint family. It was their contention that during the lifetime of Sopan, there was partition in the year 2003, between defendant no.01 and his sons. It is also stated that

after the said partition, names of the plaintiffs were recorded after death of Sopan to those lands which were given to the share of Sopan. The plaintiffs are taking income from those lands. It is also stated that only 60 R land is now with defendants and they are getting barely some income for their own survival. They are also residing in Pandharpur in an Ashram. It is also stated that plaintiffs are residing separately from them without any reasonable ground and, therefore, they are not entitled to get maintenance.

04. With these rival contentions, issues came to be framed. Parties led oral as well as documentary evidence on record. After considering the evidence on record and hearing both sides, learned trial Court has partly decreed the suit. Defendant no.01 was directed to pay maintenance at the rate of 5,000/- per month to each of the plaintiffs from the date of filing of the suit. Charge of the maintenance was kept on Gut no.70, Gut no.56 which are mutated in the name of defendants no.01 and 02, respectively and also on the house property which is recorded in the name of defendant no.01.

05. The said judgment and decree was challenged in appeal bearing Regular Civil Appeal No. 07 of 2017 by the present appellants. After hearing both sides, the appeal has been dismissed. Now, those appellants

have filed present second appeal.

06. Heard learned Advocate Mr. A.D. Shinde appearing for the appellants.

07. Taking into consideration the arguments advanced by the learned Advocate for the appellants and perusing the impugned judgments, it is not necessary even to issue notice to the respondents. It has been submitted on behalf of the appellants that both the courts below have not considered a fact that the ancestral properties are joint family properties of defendants and Sopan, which were already partitioned during lifetime of Sopan and accordingly mutations have been carried out. The properties which went to the share of Sopan are with plaintiffs. Under such circumstance, defendants cannot be held responsible to maintain the plaintiffs. When the fact of partition was brought on record, so also, the suit which was filed by the plaintiffs for partition was dismissed, these facts ought to have been considered to hold that plaintiffs are not entitled to get maintenance from the defendants.

08. The first and the foremost fact that is required to be considered is that when the relationship is not denied, in the normal course, defendant no.01 would be the Karta of the family.

However, the defendants have come with a case that already there was a partition between the defendants and their deceased son Sopan. Therefore, they ought to have led evidence. It appears that before the trial Court, absolutely no documentary evidence to support the plea of previous partition was adduced. Further, the defendants themselves did not enter into witness box. However, it appears that another son of defendants, namely Tukaram, adduced evidence in the capacity as power of attorney. Even if for the sake of arguments it is taken as being the son he had knowledge of all the facts, yet, unless he gives a specific date or month and year of partition and the details of the partition, it cannot be accepted that there was a partition in respect of the ancestral or joint family properties. Even in the written statement, those details were not given. As regards dismissal of the suit for partition filed by the plaintiffs is concerned, it appears that photo-copy of the judgment in the said suit was produced on record. Learned first appellate Court has considered that judgment also though it was a photo-copy and has correctly stated that the said dismissal of the suit was on technical point i.e. all the necessary parties were not made as party to the proceedings and, therefore, it resulted in dismissal. Even if for the sake of arguments we consider that no appeal was filed challenging that decision, yet, it cannot be stated that it supports the say of the defendants

that there was a previous partition.

09. It appears that the defendants intended to say that there was oral partition amongst defendants, Sopan and other coparceners, but then it was for the defendants to prove that the said partition was effected by metes and bounds. Mere some entries in the name of one of the coparceners will not be conclusive evidence of partition. That mutation entry itself appears to have not been produced before the trial Court. But it appears that mutation entry no. 4453 was produced at Exhibit 47 showing that on 13-01-2005, both the defendants, deceased Sopan and one Gangubai filed an application for entering the names of defendant no.01 and his sons in the record of rights of suit lands Gut no.56, 58, 67/1 and 70. Interestingly, DW 01 Tukaram does not appear to be party to the said application. PW 01 Manisha admitted in her cross examination, that name of her husband was appearing in the record of rights of Gut no.68 and now the names of the plaintiffs have been entered to that property. But then she denied that she is cultivating the said land. If we consider the acreage of the suit properties and when it is not stated in clear terms as to how many sharers were there, it is hard to believe that each one of them would have taken the entire land. Further, the mutation entry would indicate that the partition was not by metes and bounds. Only names of coparceners

or co-sharers were prayed to be entered. Therefore, both the courts below have taken note of the defence that was raised by the present defendants and the evidence. In fact, that evidence was not properly led by the defendants themselves. When there was no evidence showing that Sopan's share was carved out and was given to him during his lifetime, it will have to be held that he still has share in the suit properties and the plaintiffs being his heirs are entitled to get maintenance from the defendants.

10. Both the courts below have also considered properly the point that the father-in-law is liable to maintain widowed daughter-in-law on the basis that he is holding share of the deceased son. Further, taking into consideration the needs of the plaintiffs, especially education of the daughter, present index of price, the amount of maintenance that was awarded was also reasonable. Therefore, no error has been committed either on facts or on law by both the courts. No substantial question of law has been pointed out.

11. In the result, the second appeal is dismissed / not admitted.

(Smt. Vibha Kankanwadi)
JUDGE

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