

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

**903 SECOND APPEAL NO.605 OF 2015
WITH CA/14291/2015 IN SA/605/2015 WITH
CA/15223/2015 IN SA/605/2015 WITH SA/606/2015
WITH CA/14292/2015 IN SA/606/2015 WITH
CA/15224/2015 IN SA/606/2015**

**MOHAN BABA KHOMNE
VERSUS
ANJANABAI RAJARAM SHINDE AND OTHERS**

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Mr.V.R. Dhorde, Advocate for the appellants in both appeals.

Mr.Y.S. Chaudhari, Advocate for respondent no.1 in S.A. No.605/2015 and for respondent nos.3 to 7 in S.A. No.606/2015

Mr.V.S. Bedre, Advocate for respondent Nos.2A to 2C and 2E in Appeal No.605/2015 and for respondent Nos.1A to 1D in Second Appeal No.606/2015.

Mr.V.B. Garud, Advocate for Respondent No.2D in S.A. No.605/2015 and for respondent No.8 in SA No.606/2015.

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**CORAM: V.L. ACHLIYA, J.
DATE : 28.08.2019**

ORAL ORDER:

Heard learned counsel for the appellant and respondents. Perused the judgment and decree passed by the trial Court and confirmed in appeal.

2. Learned counsel for the appellant submits that though the appeals preferred by

the appellant raises challenge to the concurrent findings on facts recorded by the Courts below but the Appeals raises substantial questions of law. It is submitted that the foundation of the claim in the suit filed by the respondent no.1/plaintiff is based upon Section 6 of the Hindu Succession (Amendment) Act, 2005. It is the case of plaintiff that she is entitled to share in the suit properties on par with the father of the appellant. The appellant is a sister of father of appellant. It is submitted that the Courts below have decided the suit in favour of the plaintiff by holding that the provisions of Hindu Succession (Amendment) Act, 2005 are applicable with retrospective effect. It is submitted that in view of the conflicting decisions in the case of Prakash V/s Phulavati, (2016) 2 SCC 36 and Danamma @ Suman Surpur Vs. Amar (2018) 3 SCC 343, the Apex Court vide order dated 07.12.2018 in the case of **Lokamani and Ors V/s Mahadevamma and Ors in Special Leave to Appeal (C) No.(s). 684/2016** directed to place the matter before the Hon'ble Chief Justice for consideration. The Hon'ble Chief Justice has constituted three Judges Bench to resolve the

controversy. It is submitted that this Court (Coram : Smt. Vibha Kankanwadi, J) in Second Appeal No.371/2018 involving identical question of law admitted appeal on same issue.

3. The learned counsel for the appellant further submits that besides applicability of Section 6 of the Hindu Succession (Amendment) Act, 2005, the appeal raises challenge to the decisions rendered by the Courts below on the ground of perversity. It is submitted that the findings recorded by the Courts below to discard the Will executed by his grand-father are absolutely perverse and unsustainable in law.

4. On the other hand, learned counsel representing the respondents submits that there are concurrent findings on facts recorded by Courts below. It is submitted that the appeals raises no substantial questions of law. The Court below have concurrently held that the will, on the basis of which the appellant claims right, title and interest in the suit properties surrounded with suspicious circumstances and

same cannot be acted upon.

5. On due consideration of submissions advanced, I am of the view that the appeals raises following substantial questions of law:-

(i) Whether, the provisions of Section 6 of the Hindu Succession (Amendment) Act, 2005 operate retrospectively ?

(ii) Whether, the judgment and decree passed on the premise that the provisions of Section 6 of the Hindu Succession (Amendment) Act, 2005 operate retrospectively is sustainable in law ?

(iii) Whether the will dated 06.04.1992 is surrounded with such suspicious circumstances so as to discard the same ?

(iv) Whether, the Courts below committed error in holding that the plaintiff in R.C.S. No.69/1998

failed to prove that the will was executed in favour of appellant and his wife by their grand father Kondiba ?

6. In view of the conclusions arrived at the appeals raises substantial questions of law, the appeals deserve to be admitted. Hence the following order :-

ORDER

(i) **Admit.**

(ii) Issue notice to the respondents. Mr.Y.S. Chaudhari, learned Advocate accepts notice for Respondent No.1 in S.A. No.605/2015 and for respondent nos.3 to 7 in S.A. no.606/2015. Mr.Bedre, learned counsel accepts service for Respondent No.2A to 2C and 2E in Second Appeal No.605/2015 and for Respondent Nos.1A to 1D in Second Appeal No.606/2015.

(iii) Mr.V.B. Garud, learned counsel appears and accepts the notice for respondent No.2D in S.A. No.605/2015 and for respondent

No.8 in S.A. No.606/2015.

(iv) Record and Proceeding with paper book is already received. Print is dispensed with.

(v) Pending disposal of the appeals, the interim order passed in the matter directing the appellant as well as the respondents to maintain status-quo in respect of the suit property, to remain in operation till disposal of the appeals.

(vi) Pending disposal of Appeals, the appellant as well as respondents shall not create any third party interest in respect of the suit properties.

(vii) The appellant and respondents shall file an undertaking that they will not enter into agreement to create any third party interest in respect of the suit properties. Undertaking to be filed within two weeks from the date of this order.

(viii) Hearing of the appeals is expedited.

(ix) Liberty is granted to the appellant as

well as respondents to move the Court for listing appeals as soon as the Apex Court decides the issue in respect of applicability of Section 6 of the Hindu Succession (Amendment) Act, 2005.

7. The Civil Applications seeking stay are disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA