

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 203 OF 2014

Smt. Nagarbai Bhairu Khatake	.. Appellant
Vs.	
Shri Vijay Bhairu Khatake and ors.	.. Respondents

Mr.Bhushan Walimbe I/b Mr.P.G.Sarda, for the Appellant.
Mr.Samir Kumbhakoni, for the Respondents No. 2 to 5.

CORAM : M.S.KARNIK, J.

DATE : 18th JULY, 2019

P.C. :

. Heard learned Counsel for the appellant. Learned Counsel for the appellant pointed out that Bhairu is a Karta of the family. The appellant Nagarbai is the first wife of Bhairu. Respondent No.1 – original defendant No.1 – Vijay is the son of Nagarbai. It seems that dispute arose between Bhairu and Nagarbai and hence Nagarbai started residing separately after Bhairu solemnized second marriage with the original defendant No.6 – Nanda. It is the case of the respondents that Bhairu was

residing with Nanda since 1976 separately.

2. The present dispute is in respect of share which the appellant is claiming in survey No. 159 which according to her was purchased by Bhairu on 04/02/1986 in the name of defendant No.2 who is the son of Bhairu from second wife Nanda. Learned Counsel for the appellant would submit that no doubt, the appellant had filed Regular Civil Suit No. 73 of 1985, but the Suit was only for injunction restraining Bhairu from alienating the suit property in survey No. 204 in which she claims to have a share.

3. As on the date of filing of the Regular Civil Suit No. 73 of 1985, defendant No.1 – Vijay was minor. The said Suit came to be compromised on 04/02/1986 by filing compromise purshis. By virtue of compromise purshis, a sum of Rs.52,500/- was accepted by the appellant on behalf of her then minor son defendant No.1 which is his $\frac{1}{3}^{\text{rd}}$ share. The Suit came to be disposed of in terms of compromise. In terms of this

compromise, suit property in survey No. 204 was sold for consideration of Rs.1,65,000/- from out of which the sum of Rs.52,500/- was paid to defendant No.1. The compromise was signed by the appellant.

4. Learned Counsel for the appellant would contend that the compromise was only for and on behalf of her minor son - Vijay. In his submission the appellant did not receive any share from the sale consideration of property survey No. 204. Learned Counsel submits that on the very same day i.e. on 04/02/1986 Bhairu purchased suit property in survey No. 159 in the name of defendant No.2. In the submission of learned Counsel for the appellant, as the appellant did not receive any share in the sale consideration of survey No. 204, the property survey No. 159 which is purchased by Bhairu from out of the funds from sale of property survey No. 204 would continue to be joint family property. He would submit that though the appellant was residing separately after Bhairu solemnized marriage with defendant No.6 – Nanda, her ties as a member of

the joint family will not sever. She would continue to be member of the joint family during the subsistence of the marriage. Even otherwise he would submit by relying on the document of registration of sale deeds in respect of survey Nos. 204 and survey No. 159 that the sale deeds are registered on the same date. This in order to show that the property survey No. 159 is purchased from the sale proceeds of property survey No. 204 and therefore as there has been no partition of property in survey No. 204, the property in survey No. 159 will continue to be a joint family property.

5. He invited my attention to the findings of the trial Court as well as the Appellate Court to submit that the Courts below were in error in holding that the appellant was no more a member of the joint family after she started residing separately from Bhairu.

6. On the other hand, learned Counsel for the respondents invited my attention to the detailed findings of the trial Court as well as the Appellate Court. The Courts below

have come to the conclusion that though the sale deeds in respect of properties in survey Nos. 204 & 159 are executed on the same date, but sale deed in respect of property in survey No. 159 is executed before the sale deed of the property in survey No. 204. The Lower Court therefore was of the opinion that having regard to the evidence on record, the property survey No. 159 is not purchased from joint property funds.

7. Furthermore, the appellant had filed Regular Civil Suit No. 73 of 1985 for injunction against Bhairu from alienating the property in survey No. 204. The appellant compromised the Suit and accepted Rs.52,500/- on behalf of her son defendant No.1 who was then a minor and permitted sale of suit property in survey No. 204. Out of the sale consideration of survey No. 204, sum of Rs.52,500/- was paid to the defendant No.1. Considering the fact that the appellant was residing separately since 1976 and that she was also receiving maintenance and furthermore as the appellant compromised the Regular Civil Suit No. 73 of 1985 by accepting

consideration of Rs.52,500/- upon sale of property in survey No. 204, the Courts below found that the property in survey No. 159 cannot be said to have been purchased from the funds of the joint family and same cannot be said to be a joint family property. Admittedly, the appellant had received the sum of Rs.52,500/- for and on behalf of the defendant No.1 who was then a minor upon compromising the Suit.

8. Learned Counsel for the appellant submits that if not by partition, at least by inheritance, the appellant is entitled to succeed to property in survey No. 159. The Courts below have found property in survey No. 159 is a self acquired property of defendant No.2 on the basis of the evidence on record. The contention of the appellant that property in survey No. 159 was purchased from the sale proceeds of property in survey No. 204 is negatived by the Courts below. In this view of the matter, I do not see any force in the contention of the learned Counsel for the appellant.

9. I have gone through the findings recorded by the Courts below. The Courts below have concurrently found that property in survey No. 159 is a self acquired property of defendants No. 2 & 6 and not purchased from out of the funds of joint family property of Bhairu. The Courts below have come to a conclusion that the suit property in survey No. 159 is not a joint family property of the plaintiff therefore, I do not see any reason to interfere with the concurrent findings recorded by the Courts below. No substantial question of law arises in this Appeal. Appeal is dismissed.

(M.S.KARNIK, J.)