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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 460 OF 2014

WITH

CIVIL APPLICATION NO. 1302 OF 2017

IN

SECOND APPEAL NO. 460 OF 2014

WITH

CIVIL APPLICATION NO. 1485 OF 2017

IN

SECOND APPEAL NO. 460 OF 2014

Shankar Dehu Raut & ors.

..Appellants

vs.

Budhaji Mahadu Raut & ors.

..Respondents

WITH

CIVIL APPLICATION NO. 129 OF 2019

IN

SECOND APPEAL NO. 460 OF 2014

Mambibai Kanhu Pardhi (since deceased)
through her legal heirs & ors.

..Applicants

IN THE MATTER BETWEEN

Shankar Dehu Raut & ors.

..Appellants

vs.

Budhaji Mahadu Raut & ors.

..Respondents

**WITH
CIVIL APPLICATION NO. 130 OF 2019
IN
SECOND APPEAL NO. 460 OF 2014**

Fugibai Savlya Ghodvindra (since deceased)
through her legal heirs & ors. ..Applicants

IN THE MATTER BETWEEN

Shankar Dehu Raut & ors. ..Appellants
vs.
Budhaji Mahadu Raut & ors. ..Respondents

**WITH
CIVIL APPLICATION NO. 834 OF 2019
IN
SECOND APPEAL NO. 460 OF 2014**

Maruti Shankar Bhoir & ors. ..Applicants

IN THE MATTER BETWEEN

Shankar Dehu Raut & ors. ..Appellants
vs.
Budhaji Mahadu Raut & ors. ..Respondents

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Shri A.G. Damle, Senior Advocate a/w. Shri Amol P. Mhatre
a/w. P.p. Kulkarni for appellants and for applicants in
CA/1302/17 & CA/1485/17.

Mr. U.M. Mahajan a/w. Salil Dabke I/b. Divekar & Co. for
respondents in SA.

Shri Ajay Patil for applicants in CA/129/19 & CA/130/19.

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CORAM : M.S.KARNIK, J.

DATE : 18th JUNE, 2019

P.C. :

Heard learned Senior Counsel for the appellants and learned Counsel for respondents.

2. The appellants are the original defendant Nos.3 to 6. The plaintiffs had filed the suit for partition. The plaintiffs claimed to be from the branch of Mahadu.

3. Learned Senior Counsel invited my attention to the genealogy. Three brothers Dehu, Mahadu and Sadu are the successors of Govinda. The appellants – original defendant Nos. 3 to 6 are the sons of Mahadu. According to learned Senior Counsel the suit is bad on account of non-joinder of necessary parties. He would submit that the daughters of Dehu i.e. Bhagabai and Kali were not joined as parties to the suit. Learned Senior Counsel would submit that the suit ought to have been dismissed on this ground. He would further submit that specific objection to that effect was raised which is not dealt with by the Courts below.

4. There is Civil Application for intervention filed on behalf of the sisters of Dehu, Mahadu and Sadu. Learned Senior Counsel for appellants relying upon the said Civil Application contended that this is another reason why the suit ought to have been dismissed. In the submission of learned Senior Counsel, the appellants have filed a Civil Application for bringing additional evidence on record. A plea is now raised that the properties in question are self acquired properties of Dehu.

5. Learned Counsel for the respondents - original plaintiffs on the other hand invited my attention to the findings recorded by the Courts below. He invited my attention to the specific stand taken by the Advocate for the appellants – original defendant Nos. 3 to 6 in the Courts below stating that the properties are joint family properties and there has been no partition. It would be pertinent to mention that in the written statement a plea is taken that the properties were already partitioned 50 years ago. The Advocate appearing on behalf of defendant Nos. 3 to 6 in the proceeding before the trial Court,

however, admitted the position that the properties are not partitioned. Even in the written statement filed by defendant Nos. 1 and 2 it has been accepted that the properties in question are joint family properties. Defendant Nos. 3 to 6 have not led any evidence and on the contrary stated that they would rely on the evidence of defendant Nos. 1 and 2. Defendant Nos. 1 and 2 have taken a specific plea that the properties are joint family properties and more particularly in view of the specific concession of the Advocate appearing on behalf of the defendants before the trial Court “that there has been no partition of the properties and the properties are joint family properties”, I see no error in the order passed by the Courts below that Dehu, Mahadu and Sadu are entitled to share of $1/3^{\text{rd}}$ each.

6. The plaintiffs belong to the branch of Mahadu and therefore they are entitled to $1/3^{\text{rd}}$ share which would come to the share of Mahadu. Likewise defendant Nos. 3 to 6 are entitled to $1/3^{\text{rd}}$ share which would have come to the share of Dehu.

7. I am informed that Kali, daughter of Dehu has already instituted a suit claiming share in the suit properties. If at all Kali has any right it will be in the share of Dehu. Merely because, Bhagabai and Kali are not brought on record as legal heirs of Dehu and not made parties to the suit, will not deprive the heirs of Mahadu to their rightful $1/3^{\text{rd}}$ share.

8. Furthermore, since the specific stand is taken all along and even in view of the concession of the Advocate that the properties are joint family properties, at this stage the plea raised by the appellants that the properties are self acquired properties, cannot be accepted. The Civil Application No. 1485 of 2017 for bringing additional documents on record to prove the property is self acquired property of appellants cannot be entertained at this stage, hence rejected.

9. I have gone through the concurrent findings recorded by the Courts below. I see no error in the findings recorded by the Courts below and do not find any substantial

question of law involved for consideration. The Second Appeal is dismissed.

10. The Civil Application for intervention is rejected with liberty to the applicants adopt appropriate remedies as may be available in law.

11. At this stage learned Senior Counsel for the appellants requests that interim relief granted by this Court on 8th September, 2017 be continued for a further period of 8 weeks.

12. Since the interim relief is in operation from 8th September, 2017 onwards, it would be reasonable to continue the ad-interim relief for a further period of 6 weeks.

(M.S.KARNIK, J.)