

DDR

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

APPEAL FROM ORDER ST. NO. 12358 OF 2019

WITH

CIVIL APPLICATION ST. NO. 12361 OF 2019

IN

APPEAL FROM ORDER ST. NO. 12358 OF 2019

Omkar Rajaram Chandore & anr.

..Appellants
(Org. plaintiffs)

vs.

Subhash Dattu Chandore & ors.

..Respondents
(Org. defendants)

....

Shri P.K. Dhakephalkar, Senior Advocate I/b. Shri Nilesh M. Wable for appellants.

Shri V.B. Tapkir for respondent Nos. 1 to 7.

Shri Abhijeet Devkhile for respondent No.8

Shri Siddhesh Bhole a/w. Niyati Shah & Krupashree Sawant I/b. Haresh Jagtiani & Associates for respondent No.21.

Shri S.S. Kanetkar for respondent No.22.

....

CORAM : M.S.KARNIK, J.

DATE : 25th JULY, 2019

P.C. :

The appellants are the original plaintiffs. The order impugned in this Appeal is passed below Exhibit 5 by the 4th Joint Civil Judge, Senior Division, Pune. The plaintiffs filed a suit for declaration, injunction, partition and separate possession of share in landed and house properties described in paragraph Nos. 1(a) to 1(1) of the Plaint. The plaintiffs also prayed for direction to respondents not to create third party interest or charge over the suit property described in paragraph no.1(a).

2. Learned Senior Counsel Shri Dhakephalkar appearing on behalf of the appellants – original plaintiffs while assailing the order of the trial Court invited my attention to page 49 of the paper-book where the genealogy is stated. The appellants Omkar and Akshay are the sons of Rajaram Chandore. One Nathu Laxman Chandore was the original tenant in respect of the suit properties. By virtue of proceedings under the Bombay Tenancy and Agricultural Lands Act and orders passed thereon, Nathu became deemed purchaser of the said lands. Nathu had two daughters Shantabai and Janabai and one

son by name Dattu. Nathu died on 12/1/1974. Dattu had five sons and two daughters. Rajaram - father of appellants is son of Dattu. The appellant No.1 Omkar is born on 15/5/1998. The appellant No.2 is born on 6/5/2000.

3. Shri Dhakephalkar submitted that on the basis of the partition effected in the year 1987, the defendants claimed to be in possession of their respective shares. However, the defendants sold off their portion of the suit properties which had come to their share by various agreements to respondent No.20 and subsequently respondent No.20 entered into further transactions with respondent No.21.

4. Learned Senior Counsel submitted that the partition which is alleged to have taken place in the year 1987 cannot be said to be a valid partition. According to him, the plaintiffs who are the sons of Rajaram will have a share in the suit properties. According to him, there was no partition in the year 1987 and that so called partition was not acted upon. He would invite my attention to the stand of the defendant Nos.1,9 and 10 taken in

Suit No. 533 of 2005. They had contended that there was no partition of joint family properties under Section 85 of the Maharashtra Land Revenue Code in the year 1987, 1993 and 1994 and it was not legal partition. In so far as suit property i.e. Survey No. 98 is concerned, defendant No.1 then had taken a stand and admitted that there was no partition. The suit came to be compromised. The plaintiffs' father and uncles and defendant Nos.1, 9 and 10 later on admitted that there was partition in the year 1987. Shri Dhakephalkar would submit that defendant Nos. 1, 9 and 10 had earlier taken a stand that there was no partition. In these circumstances, Shri Dhakephalkar submits that such a compromise is not binding on the appellants. He would moreover submit that the said compromise was entered into after the birth of plaintiffs. The said compromise did not protect the interest of the plaintiffs who were then minors and therefore the same is not binding on them.

5. Relying on the decision of the Apex Court in the case of **Ratnam Chettiar and Ors. vs. S.M. Kuppuswami Chettiar and Ors.** reported in **AIR 1976 SC 1** Shri Dhakephalkar would

submit that the Apex Court has clearly held that only in respect of the partition effected between the members of the Hindu family, such a partition would be binding on the minors also if it is done in good faith and in bonafide manner keeping into account the interest of the minors. In the present case, he would submit that there is nothing to indicate that the interest of the plaintiffs who are then minors was protected. He invited my attention to the impugned order passed by the trial Court and contended that the trial Court was not justified in observing that it is not plaintiffs' case that the partition is unjust and unfair and detrimental to the right of the plaintiffs. He would submit that the trial Judge has to be satisfied that the interest of the minor plaintiffs is taken care of.

6. Per contra, learned counsel of the respondents supported the order passed by the trial Court. Learned counsel invited my attention to the various documents on record to show that there was in fact a partition in the year 1987. The said partition was acted upon and by various agreements the suit properties which came to the share of plaintiffs' father were sold

much prior to the birth of the plaintiffs. Even the plaintiffs' uncles sold their share. He also invited my attention to the consent terms filed in the suit where the plaintiffs' uncles agreed that there was a partition in the year 1987.

7. I have gone through the findings of the trial Court while deciding the application (Exhibit 5). In my opinion, the order passed by the trial Court does not call for any interference. On the basis of the pleadings and materials on record, prima facie it appears that there was a partition in the year 1987 and it was acted upon. The plaintiffs' father and uncles had acted upon the partition and further created interest in the suit property in favour of respondent No.20 even prior to the birth of the plaintiffs.

8. In so far as the decree passed in terms of the compromise is concerned, no doubt, initially the defendants had taken a stand that there was no partition in the year 1987. However, later on while entering into the compromise they accepted the partition of 1987 and that the same has been acted upon. It is also seen that pursuant to the agreements executed in

favour of respondent No.20, the possession of the suit property came to be handed over to respondent No.20. Considering the materials on record and the reasons as given by the trial Court while rejecting the application (Exhibit 5), I do not find any reason to fault with the view of the trial Court that there was already partition of the joint family properties prior to the birth of the plaintiffs. The trial Court has also observed that the partition of the joint family property is equitable and not unjust or unfair and detrimental to the rights of the plaintiffs. I therefore do not find any merit in the present Appeal. The same is dismissed.

9. Learned Senior Counsel Shri Dhakephalkar for the appellants made a request for grant of appropriate interim orders for a limited period protecting the interest of the appellants. The request is rejected.

10. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)