

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

**SECOND APPEAL NO.126 OF 2018
WITH
CIVIL APPLICATION NO.1511 OF 2017**

Shri Jagannath Waman Undre
Age: 69 yrs., Occ:Agriculture,
Residing at Behind Vithal Mandir,
Manjari Khurd, Taluka: Haveli,
District: Pune

... Appellant

Vs

Smt. Yamunabai Sitaram Kadam
Age: 71 years, Occ: Agriculturist,
Residing at Behind Ram Mandir,
Rahatni, Taluka: Haveli,
District: Pune

... Respondent

...

Mr. S.V.Sadavarte for the Appellant.

Mr. Utkarsh Desai with Mr. Tukaram S. Shendge for the
Respondent.

CORAM : SANDEEP K. SHINDE J.

DATE : 1st APRIL, 2019

ORAL JUDGMENT :

Heard learned counsel for the parties.

2 Sister, of the appellant had filed the suit for declaration
of her rights in the suit property, which was dismissed by the learned
Trial Judge. However, decree was reversed in Civil Appeal No.557 of

2013 by the learned District Judge-11, Pune. It is against the decree passed in the Civil Appeal No.557 of 2013, the defendant has preferred this Second Appeal.

3 Suit property is the land admeasuring 1H and 0.2R more particularly described in paragraph 1 of the plaint.

4 I will refer the parties as per their status in the suit. Plaintiff is sister of the defendant and Waman Bala Undre was their father and Shantabai Waman Undre was mother. Character of the property is ancestral property. Waman Undre died on 15th April, 1944 leaving behind wife Shantabai, daughter Yamunabai (Plaintiff) and son Jagannath (Defendant). After death of Waman, name of the defendant alone was entered into the records of rights of the suit property. At the relevant time, he was minor and, therefore, name of his mother was mentioned as natural guardian.

5 It is not in dispute that since 1972, mother Shantabai left the house in the state of insanity and her whereabouts were not known. She was about 65 years old when she left the house. It appears from the record that Shantabai is no more when the suit was instituted. Resultantly, only plaintiff and the defendant are the heirs of late Waman Undre.

6 Plaintiff was apprehending alienation of the suit property by the defendant and, thereby denying her rights therein which constrained her to file subject suit for declaration of her right therein and for perpetual injunction.

7 Relationship between the parties is not in dispute. The defendant, however, resisted the suit on the ground that since Waman Undre died in 1944, as per the prevailing laws of succession, only male members of the family were having rights in the ancestral property and, therefore, mutation entry no.1119 was correctly recorded in his name alone. He denied right and interest of the

plaintiff in the suit property.

8 The learned trial Court held that under the Co-parcenary Law, a wife or a widow or a daughter though a member of joint Hindu Family, was not entitled to any share or interest in the co-parcenary property of that joint family, except to the extent of a right of maintenance and residence or marriage expenses. The trial Court thus held that a woman whether wife or widow or daughter, has no right in co-parcenary property and, therefore, could not claim share separately. On this ground alone, the suit was dismissed.

9 The Appellate Court has considered provisions of Section 3 of the Hindu Women's Right to Property Act, 1937 which reads as under:

“3 Devolution of property. -

(1) When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow, all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son: Provided that the widow of a predeceased son shall inherit in like manner as a son if

there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son: Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian Succession Act, 1925, applies."

10 Thus, under Sub-section (2) of Section 3 of Hindu Women's Right to Property Act, 1937 when a Hindu governed by any school of Hindu law other than Dayabhaga dies having at the time of his death interest in Hindu joint family property, his widow shall have the same right, widow shall have in the property the same interest as the deceased had. However, such interest shall be limited interest known as Hindu woman's estate.

11 Section 14 of the Hindu Succession Act, 1956 reads as under:

"14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

12 Thus, in view of the provisions of Section 14 of the Hindu Succession Act, 1956, the Appellate Court has held that the mother of the plaintiff and the defendant became absolute owner of her share in the suit property which was the limited interest or Hindu woman's estate. In view of the provisions of Section 3 of the Hindu Women Right to Property Act, 1937. Section 14 (1) of the Hindu Succession Act, 1956 reads that

any property possessed by female Hindu whether acquired before or after the commencement of the Act shall be held by her as full owner thereof and not as a limited owner. Explanation appended to the said Section embraces all the modes of acquisition, which includes acquisition of the property by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance ,or by gift from any person, whether a relative or not.

. Thus, the limited interest or Hindu woman's estate shall be held by the widow as full owner in terms of provisions of Section 14(1) of Hindu Succession Act, 1956.

13 Therefore, on bare perusal of Section 14, it appears that the property or interest in the property acquired by a female Hindu member of the family before commencement of the Hindu Succession Act, 1956, becomes an absolute owner.

14 In the case in hand, it is not in dispute that mother of the plaintiff and the defendant had died after 1956 and, therefore, her interest in the property would devolve as per the scheme in terms of Section 15 of the Hindu Succession Act, 1956. Thus, her property will devolve upon her sons, daughters and husband.

15 Thus, taking into consideration facts of the case, in my view, the learned Appellate Court has recorded the finding of fact and law correctly, which is consistent with the evidence on record.

16 Appeal, therefore, does not give rise to any substantial question of law. Appeal is dismissed. Civil Application is disposed of accordingly.

(SANDEEP K. SHINDE, J.)