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

**SECOND APPEAL NO. 353 OF 2018
WITH
CIVIL APPLICATION NO. 470 OF 2018
IN
SECOND APPEAL NO. 353 OF 2018**

Ashok Subrao Matkari & ors. ..Appellants
vs.
Rupali Maruti Turai & anr. ..Respondents

....
Shri S.R. Ganbavale for appellants.
Shri Nikhil Pawar for respondent Nos. 1 and 2.

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CORAM : M.S.KARNIK, J.

DATE : 8th JULY, 2019

P.C. :

Heard learned Counsel for the appellants.

2. The appellants are the original defendants. Appellant No.1 is father of respondent No.1. Respondent No.2 is the first wife of appellant No.1.

3. The present respondent Nos.1 and 2 – original plaintiff Nos.1 and 2 filed a suit for partition and separate

possession of the suit properties. Plaintiff No.2 is the first wife of defendant No.1. During the subsistence of the marriage with plaintiff No.2, defendant No.1 married defendant No.4.

4. It is pointed out that at the relevant time defendant No.4 was minor. Defendant No.5 is son of defendant Nos.1 and 4. Defendant Nos. 6 and 7 are real sisters. Defendant Nos. 6 and 7 have relinquished their share in favour of defendant No.1. There is no dispute in so far as this aspect is concerned.

5. The plaintiff by filing the suit contended that the suit properties in question are joint family properties in which they have a share. They prayed for partition and separate possession of the suit properties.

6. Learned counsel for the appellants invited my attention to the findings of the Courts below. He also drew my attention to the issues framed by the trial Court and the Appellate Court. He submitted that the some of the properties are trust properties in respect of which the plaintiffs have no

right to claim partition. Learned counsel would submit that house property was always in possession of defendant No.1. Defendant Nos. 4 and 5 are residing there, therefore the plaintiffs have no right to claim partition. Inviting my attention to the findings of the Courts below learned Counsel would submit that the Courts below have not justified in decreeing the suit.

7. Learned Counsel for the respondents on the other hand supported the orders passed by Courts below. He would submit that there are concurrent findings of fact which do not call for any interference.

8. I have gone through the findings of the Courts below. The Courts below have concurrently found that the properties in question are ancestral properties and as marriage of plaintiff No.2 and defendant No. 1 is in subsistence, the plaintiffs have a rightful share in the suit properties. Moreover, even in so far as the contention that the some of the properties are trust properties, the said contention of learned Counsel can

only be stated to be rejected as even these properties have been partitioned between the brothers viz. Defendant Nos. 1 and 2. The Courts below have found that the plaintiffs No.1, 2 and defendant No.1 are entitled to 1/10th share in the suit properties.

9. Considering the concurrent findings of fact recorded by the Courts below, I do not find any substantial question of law arises for consideration in the present Appeal. The Appeal is therefore dismissed.

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

(M.S.KARNIK, J.)