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

**SECOND APPEAL NO.801 OF 2019  
WITH  
INTERIM APPLICATION NO.1 OF 2019**

Shri. Baban Genu Sabale ... Appellant  
Versus  
Smt. Kalpana @ Dagadubai Kondiba Sabale and Ors. ... Respondents

Mr. Balasaheb G. Ligade for the Appellant.

**CORAM : SMT. SADHANA S. JADHAV, J.  
DATE : 11<sup>th</sup> DECEMBER, 2019**

**PC.:**

1           The appellant herein impugns the Judgment and Order of the District Judge-3, Khed- Rajgurunagar, District, Pune in Regular Civil Appeal No.393 of 2014 dated 31<sup>st</sup> July 2019 thereby dismissing the appeal filed by the appellant challenging the findings of the Joint Civil Judge, Junior Division, Khed in R.C.A. No.83 of 2004 dated 6<sup>th</sup> March 2012. The only substantial question of law as framed by the appellant herein is as follows :-

“Whether in the facts and circumstances of the case whether the findings of the both the Ld. Courts below in holding that Plaintiff No.1 is legally wedded wife and Plaintiff No.2 is son of deceased Kondiba Sabale, is illegal, erroneous and perverse.”

2           The learned counsel for the appellant has drawn attention of this Court to the findings recorded by the original Court in paragraph Nos.17 to 20 of the impugned judgment. It is the contention of the learned counsel for the appellant that the plaintiff has failed to establish the date of her marriage to Kondiba Sabale. The plaintiff had stated that she was married to Kondiba Sabale as per the Hindu rites and rituals. He has examined Ramdas Mande - PW2 who was co-worker with Kondiba in Saw Mill. He has categorically stated in his substantive evidence that the plaintiff was married to Kondiba sometime in the month of June in the year 1977 ('Jestha' as per Marathi calendar). That she was married at the temple of Saloba at Kalewadi in Godegaon as per the Hindu Rites and Religion, Saptapadi, Mangalastaka, etc. The relatives of plaintiff as well as Kondiba were present at the marriage. PW3 - Kisan Sabale had also attended their marriage. He has also stated that the marriage between the plaintiff and Kondiba was solemnized in the year 1977 and that plaintiff no.2 is their son.

3           In the cross-examination, a suggestion was put to the witness as to whether Kondiba was absconding since 1971-1972 and he appears to have answered in the affirmative as the date since he was absconding. It is a matter of record that 20 years prior to filing of the suit Kondiba was not only missing but was unheard of. It appears from the record that one Sopan

Baban Sabale had filed miscellaneous application for obtaining legal heirship certificate of Kondiba and had obtained it on 16<sup>th</sup> January 2000 and therefore, according to Sopan, the respondent herein is not the legally wedded wife of Kondiba and that it was Shantabai. It is pertinent to note that the news of Kondiba missing was given in the newspaper in the year 1986 and thereafter in 2002 Baban Sabale i.e. the present appellant had filed the proceeding to seek succession/ legal heirship certificate. The learned counsel for the appellant submits that Baban happens to be the uncle of Kondiba. The findings recorded by the trial Court in paragraphs 17 to 20 cannot be said to be perverse. It appears that in fact the appellant who claims to be the uncle of Kondiba had filed the legal heirship certificate with a malafide intention. No intervention is called for in the findings recorded by both the Courts below. The appeal being devoid of merits needs to be dismissed. Hence, the Appeal stands dismissed. Interim Application is accordingly disposed of.

4           At this stage, the learned counsel for the appellant seeks stay of this order. There are concurrent findings recorded by both the Courts below, hence, request of the learned counsel does not deserve to be considered.

**(SMT. SADHANA S. JADHAV, J.)**