

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 16 OF 2018
ALONGWITH

CIVIL APPLICATION NO. 1908 OF 2017

Shri. Rajaram Kallappa MadbhaveAppellant
V/s.
Sou. Vimal Annappa MadbhaveRespondent

Mr. Prajakt M. Arjunwadkar, Advocate for the appellant.

Mr. Sandeep S. Koregave, Advocate for respondents no.1 to 3A and 3B.

CORAM : SANDEEP K. SHINDE, J.

Monday, 25th March, 2019.

P.C. :

1. This Appeal is preferred by defendants no.2, 3, 6 and 7 against the concurrent findings of facts rendered by both the Courts in the suit instituted by respondent no.1 for the

partition of the suit properties.

2. *The facts in brief are as under :*

. Krishnappa, a common ancestor died sometime in 1950. He was survived by his wife, Sundarabai, two sons- Kallappa, Annappa and daughter, Shridevi. Sundarabai died in January, 1982. Plaintiff is wife of Annappa and daughter of Shridevi. Thus, plaintiff's husband, Annappa is her maternal uncle who was deaf and dumb and thus was the neglected member of the joint family. He was denied his legitimate share by his brothers and their family members. Out of the wedlock of plaintiff with Annappa, two daughters were born. It is pleaded that, when Annappa demanded his share in the suit property, he was subjected to harassment by his brothers and their family members, eventually the defendants in this case.

3. *It is in these circumstances, Annappa's wife,*

respondent no.1 herein (plaintiff) filed a suit for partition in the year 1994. She impleaded her husband, Annappa as defendant no.8. In the cause title, the plaintiff claimed share in the suit property through her deceased mother, Shridevi.

4. *Pending suit, plaintiff's husband, Annappa died in December, 2003 and his two daughters, Sunita and Manik were impleaded as plaintiffs no.2 and 3.*

5. *The suit was resisted by the defendants on the ground of its maintainability, in as much as, plaintiff could not lay claim for partition through her deceased mother. Indisputedly, plaintiff has had no right to sue for partition during the lifetime of her husband, however, husband died during the pendency of the suit.*

6. *Thus, taking into consideration the pleadings and the circumstances under which the suit was instituted, both the Courts overruled the technical objection and held*

that since plaintiff's husband died pending suit, it was open for her to claim and ask for partition of the suit properties which are ancestral properties.

7. *I have gone through the plaint. Admittedly, the suit was not filed under Order 32 of the Civil Procedure Code. Though on the plain reading of the plaint, it appears the Suit was instituted for the benefit of defendant no.8, strictly speaking it was not a Suit under Order 32 of the Civil Procedure Code.*

8. *Be that as it may, since upon the death of the plaintiffs husband, right is accrued to the plaintiff to claim partition through her deceased husband, both the Courts below thus concurrently held that the suit through her deceased husband was maintainable and thus dismissal of the suit on technical ground would not be in furtherance of justice.*

9. *That after going through the evidence on record*

and the pleadings, the findings rendered by the Courts below, is consistent with the evidence. The Appeal therefore does not give rise to any substantial question of law. The Appeal is dismissed.

10. *In view of dismissal of Appeal, Civil Application No. 1908 of 2017 does not survive. The same is accordingly disposed of.*

(SANDEEP K. SHINDE, J)