

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No.574 of 2018
Ranjit Patekar & Ors. Vs. Trivenibai Patekar & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.P. Kariya, Advocate for appellants
Mr. G.M. Shitut, Advocate for respondents No.1 to 4.

CORAM : MANISH PITALE, J.

DATED : OCTOBER 15, 2019

By this appeal, the appellants (original defendants) have challenged concurrent judgments and orders passed by the two Courts below, whereby suit for partition and separate possession filed by the respondents No.1 to 6 in respect of suit house property was decreed.

2. In the suit filed by the respondents (plaintiffs), it was specifically pleaded that they were descendants of Waman, who along with his brother Balaji, were the two sons of one Kisan. The defendants in the said suit were descendants of said Balaji. It was claimed that respondents (plaintiffs) were entitled to half earmarked share in the suit house property through Waman. A genealogy was specifically stated in the paragraph No.4 of the plaint which showed that Kisan had two sons Waman and Balaji and further respective descendants of Waman and Balaji were stated.

3. In the written statement, the said genealogy was specifically admitted on behalf of the appellants (defendants). The Trial Court proceeded on this basis and found that the respondents (plaintiffs) had made out a case in their favour and accordingly, a decree for partition was passed holding that respondents (plaintiffs) were entitled for half share in the suit house property.

4. Aggrieved by the same, the appellants filed First Appeal before the Appellate Court, which stood dismissed and findings rendered by the Trial Court were confirmed. In this appeal, for the first time, it was claimed on behalf of the appellants, firstly, that widow of Kisan survived and she died sometime in the year 1973. It was submitted that since Kisan had died in the year 1952, his widow was entitled to limited share in the property and that after enactment of the Hindu Succession Act, 1956, she was entitled to share therein. Secondly, it was contended that there were 4 daughters of Kisan other than Waman and Balaji and that this aspect was also required to be considered while considering the decree for partition passed concurrently by the two Courts below.

5. In so far as the existence of alleged daughters is concerned, in the pleadings before the Trial Court no such statement was made, in fact,

genealogy specifically stated by the respondents (plaintiffs) was admitted in written statement by the appellants. Therefore, there is no basis either in the pleadings or evidence to show the existence of daughters and consequent effect on the decree of partition by the two Courts below. This Court refuses to entertain the aforesaid contention raised on behalf of the appellants, for the first time in Second Appeal before this Court.

6. In so far as wife of Kisan is concerned, again in genealogy her existence was not stated and yet genealogy was admitted by the appellants in their written statement. But, it is true that in cross examination of the witness on behalf of the respondents (plaintiffs), it was conceded that widow of Kisan did out live him and she used to live with either Waman or Balaji from time to time. This would indicate that widow of Kisan indeed out lived him and this aspect could have been taken into consideration by the Court below. But, the said fact in itself makes no material difference in the nature of decree passed by the two Courts below, as share of widow of Kisan would ultimately devolve on Waman and Balaji equally.

7. In view of the above, this Court finds that findings of facts rendered by the two Courts below on the pleadings and evidence led by the respondents for

partition are sustainable and such findings cannot be said to be perverse. No substantial question of law arises in this appeal.

8. In that view of the matter, the instant second appeal is dismissed.

JUDGE

MP Deshpande

MP Deshpande