

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO.81 OF 2018**

Govind Shankar Malme & Ors.

...Appellants

vs.

Bhagwan Govind Malme (Deceased)

Through LRs – Chingubai Bhagwan Malme & Ors....Respondents

....

Mr. Samir Kumbhakoni, for the Appellants.

None for the Respondents.

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CORAM : S.C. GUPTE, J.**DATE : 5 OCTOBER 2020****P.C. :**

. Heard learned Counsel for the Appellants. None appears for the Respondents.

2. The second appeal challenges an order passed by the lower appellate court in a regular civil appeal challenging a decree of partition. Appellant No.1 herein, one Govind Shankar Malme (“Govind”), was the original defendant in the partition suit. The suit was filed by one Bhagwan Govind Malme (“Bhagwan”, since deceased and represented now by his legal heirs, who are Respondents to the present second appeal). The other two Appellants, Appellant Nos. 2 and 3, who were, respectively, defendant nos. 2 and 3 to the original partition suit, are illegitimate sons of Govind. The original partition suit was decreed by the trial court. The trial court,

however, determined four shares in the suit property, namely, the share of Govind (father), his son Bhagwan (plaintiff) and the shares of two illegitimate sons of Govind (defendant nos 2 and 3). 1/4th share was, accordingly, decreed in favour of the deceased Bhagwan, the other three shares belonging to Govind and his two illegitimate sons. The matter was carried in appeal by the legal heirs of the original plaintiff Bhagwan before the lower appellate court, who, by the impugned order, modified the decree of partition. The appeal court determined two shares in the suit property, namely, the shares of Govind (father) and Bhagwan (son). The appeal court held that original defendant nos. 2 and 3, who are admittedly illegitimate sons of Govind, did not have any right in the suit property during the lifetime of Govind.

3. Learned Counsel for the Appellants submits that suit properties are held to be ancestral joint family properties and the two illegitimate sons of Govind would also have shares in the joint family properties. Learned Counsel, relying on the case of **Revanasiddappa vs. Mallikarjun**¹, submits that children of void or voidable marriages are entitled not only to the self-acquired property of their parents but even ancestral or joint family property.

4. In **Revanasiddappa's** case, the Supreme Court was considering the right of inheritance of illegitimate children (i.e. children of void or voidable marriages) in the property of their deceased parents. The court held that they had a share in such property, whether the property be self-acquired or joint family property of their parents, upon its partition in favour of their parents; they may even seek partition of joint family

1 (2011) 11 Supreme Court Cases 1

property based on the share claimed by them from their parents but that could only be after their parents' death; during the life time of their parents, they cannot have any share in the property of the parents.

5. Learned Counsel for the Appellants relies on the observations of the Supreme Court in paragraphs 25 to 29 of **Revanasiddappa's** judgment to support his submission that illegitimate children are entitled to have a share in the joint family property. Learned Counsel is not right there. In the first place, in **Revanasiddappa's** case, the Supreme Court was not considering the Hindu law of joint property, where co-parceners claim right by way of birth. The Supreme Court was construing Section 16 of Hindu Marriage Act, which deals with legitimacy of children of void and voidable marriages. Sub-section (1) of Section 16 provides that notwithstanding that a marriage is null and void under Section 11 of that Act, any child of such marriage who would have been legitimate, if the marriage had been valid, shall be legitimate, whether or not such child was born before the commencement of the Marriage Laws (Amendment) Act, 1976, or a decree of nullity was granted in respect of that marriage under the Hindu Marriage Act or the marriage is held to be void otherwise than on a petition under the Act. Sub-section (2) provides that where a decree of nullity is granted in respect of a voidable marriage under Section 12, any such child begotten or conceived before the decree who would have been a legitimate child of the parties to the marriage if at the date of the decree the marriage had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity. Sub-section (3) provides that nothing contained in sub-section (1) or sub-section (2) shall be construed to confer upon any child of a marriage, which is null and void, or which is annulled under a decree of nullity under

Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of not being a legitimate child of his parents. A question arose as to whether, whilst claiming right in the property of a parent, which is permissible under sub-section (3) of Section 16, inheritance of the illegitimate child shall be restricted to the self-acquired property of the parent or shall include even the parent's share in the joint family property. In **Revanasiddappa's** case, the Supreme Court made it clear that the right of inheritance of an illegitimate child to his or her parents' property extends not only to the parents' share in self-acquired property, but also to the parents' share in joint family property. **Revanasiddappa's** case did not consider the Hindu law of joint property; it never considered or countenanced the share of an illegitimate child in joint family property claimed by way of birth; it instead considered the right of inheritance of an illegitimate child in the parents' property, whether self-acquired or joint family property and not the right of an illegitimate child as a co-parcener in the Hindu joint family property. In fact, sub-section (3) of Section 16 of the Hindu Marriage Act itself makes it clear that the right available to an illegitimate child is merely to the property of parents and not to the property of the joint family of its parents.

6. There is, accordingly, no merit in the challenge to the decree of partition as altered by the lower appellate court. The second appeal does not give rise to any substantial question of law for the determination of this Court.

7. The second appeal is, in the premises, dismissed.

8. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(S.C. GUPTE, J.)