

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

**FIRST APPEAL NO.1773 OF 2019
ALONG WITH
INTERIM APPLICATION NO.1 OF 2019**

1. Shashikant Shripad Pandit)
Age 81 years, Occ. Retired,)
R/at: Flat No.6, Suyash Residency,)
1039/4571, Gokhale Road,)
Model Colony, Pune - 411 016.)

2. Sharad Shripad Pandit)
Age 76 years, Occ. Medical Practice)
R/at : 290, Lord Wood Road, Harborn)
Burning Ham, B17, 8A, U.K.)

3. Shirish Shripad Pandit)
since deceased through his legal heirs)

3A. Chitra Shirish Pandit)
Age 66 years, Occ. Household,)
R/at : Flat No.3, Sarla Rojes Housing)
Society, A Wing, City Survey No.538,)
Survey No.12/2/2, Plot No.8,)
Someswar Wadi Road, In front of)
Rajwada Hotel, Pashan, Pune 411 008.)

3B. Sangram Shirish Pandit)
Age 38 years, Occ. Service,)
R/at : Flat No.4, Sarla Rojes Housing)
Society, A Wing, City Survey No.538,)
Survey No.12/2/2, Plot No.8,)
Someswar Wadi Road, In front of)
Rajwada Hotel, Pashan, Pune 411 008.)

3C. Sanat Shirish Pandit, Adult)
R/at : Flat No.3, Sarla Rojes Housing)
Society, A Wing, City Survey No.538,)
Survey No.12/2/2, Plot No.8,)
Someswar Wadi Road, In front of)
Rajwada Hotel, Pashan, Pune 411 008.)

.. Appellants
(Original Defendants)

Versus

1. Kaustubh Subhash Pandit)
 Age 46 years, Occ. Service,)
 R/at : 1170/22, Revenue Colony,)
 Shivajinagar, Pune – 5.)

2. Kedar Subhash Pandit)
 Age 44 years, Occ. Service,)
 R/at : Yogesh Apartment,)
 Tulshibagwale Colony,)
 Sahakarnagar, Pune – 9.)

3. Sou.Sumedha Sarang Gokhale)
 Age 46 years, Occ. Household,)
 R/at : 1170/22, Revenue Colony,)
 Shivajinagar, Pune – 5.)

4. Sou. Urmila Subhash Kulkarni)
 Age 67 years, Occ. Household,)
 R/at : Building No.3C, Flat No.1,)
 Jagdishnagar, Aundh, Pune- 411 007.)

.. Respondents
 (Original Plaintiffs)

 Mr.Girish R. Agrawal for the appellants.
 Mr.Jaydeep Deo for the respondent nos.1 to 3.

CORAM : **R.D. DHANUKA, J.**
RESERVED ON : **5th February 2020**
PRONOUNCED ON : **25th February 2020**

Judgment :-

. By this First Appeal filed under Section 96 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned the judgment and order dated 11th March 2019 passed in Special Civil Suit No.1120 of 2016 by 4th Joint Civil Judge, Senior

Division, Pune thereby decreeing the said suit partly which was filed for seeking partition and permanent injunction in respect of some of the properties. By consent of parties, First Appeal is heard finally at the admission stage. The appellants were the original defendants whereas the respondents were the original plaintiffs before the Trial Court. Some of the relevant facts for the purpose of deciding this First Appeal are as under :-

2. The suit properties are comprising of land bearing CTS No.1170/22 area 878.16 sq.meter within four boundaries towards east-CTS No.1170/21 of Mr.Chiplunkar, Joshi, towards south-road, towards west-CTS No.1170/23 of Dr.Kinikar and towards north -Government Property comprising of building namely Hira Apartment ground plus tow storied building and Ushashri building consisting of ground and two storied building except first and second floor of Hira Apartment (hereinafter referred to as “the suit properties”).

3. It was the case of the respondents (original plaintiffs) that the suit properties were the self-acquired properties of Late Shripad Pandit who was the grand father of the respondents. The suit properties were purchased in the name of Late Smt. Usha who was wife of Shripad Pandit and grand mother of the respondents. The said Shripad Pandit constructed Ushashri building in the year 1956 out of his own income. He

also constructed Hira Apartment and sold the tenaments except ground floor under the provisions of Maharashtra Ownership Flats Act, 1970 to Shri Arora, Chitnis and Pandit. The appellants (original defendants) are the uncles of the respondents (original plaintiffs). The respondents were having paternal aunts namely Mrs.Pushpa, Mrs.Hema, Mrs.Leela, Mrs.Anju. Mrs.Pushpa has expired. Father of the respondents Subhash also expired in the year 1994. After the death of Subhash, mother of the respondents who was the defendant no.4 got remarried. She was however, joined as party to the suit as one of the legal heirs of Subhash. Late Shripad Pandit died intestate in the year 2006 at the age of 94 and his wife Usha Pandit predeceased him and died in the year 1999.

4. It was the case of the respondents (original plaintiffs) that the said deceased Usha Pandit and Shripad Pandit had four sons and four daughters. After demise of deceased Usha Pandit and Shripad Pandit, each son and daughter had 1/8th share therein. It was the case of the respondents that sisters of the appellant nos.1 to 3 (defendant nos.1 to 3) relinquished their undivided share in the suit property on 25th November 2006 by a registered release deed bearing No.7493/2006 and thus had no right, title and interest of any nature whatsoever in the suit property.

5. On 2nd September 2016, the respondent nos.1 to 3 filed Special Civil Suit no.1120 of 2016 in the Court of Joint Civil Judge,

Senior Division, Pune for partition, separate possession of their 1/4th share in the suit property and permanent injunction and mense profit.

6. On 20th December 2016 and 5th April 2017, the appellant nos.1 and 2 filed their written statements before the Trial Court. The appellant no.3 died during the pendency of the suit. His legal heirs were accordingly brought on record who adopted written statement filed by the appellant no.1. The suit proceeded ex parte against the respondent no.4. The appellant nos.1 to 3 admitted the relation between the parties and contentions raised in paragraphs 4 to 6 of the plaint and denied the rest of the contentions of the plaint. It was further contended by the appellant nos.1 to 3 that sisters of the appellant nos.1 to 3 relinquished their right, title and interest in the suit property in favour of the appellant nos.1 to 3 and thus the respondents were not entitled to 1/4th share in the suit property.

7. Trial Court framed six issues for determination. Both the parties led oral and documentary evidence. On 11th March 2019, after hearing both the parties, learned trial Judge allowed the said suit and declared that the appellants and the respondent nos.1 to 3 were having 1/4th share each in units/apartments reserved for their joint family i.e. ground floor, first floor and second floor of old building and ground floor of new building situated at CTS No.1170/22, Shivajinagar, Pune. It was

further held that the respondent nos.1 to 3 (original plaintiffs) are entitled for partition, separate possession of their 1/4th share in the suit property. Trial Court also restrained the appellants permanently from creating third party interest to the extent of 1/4th share of the respondent nos.1 to 3 in the suit property and directed that partition of 1/4th share of the respondent nos.1 to 3 be effected by appointing Court Commissioner and separate possession of their share be given to them. Being aggrieved by the said judgment and decree dated 11th March 2019, the appellants filed this First Appeal.

8. Mr.Agrawal, learned counsel for the appellants filed compilation of documents comprising of pleadings/documents and evidence led by the parties before the trial Court. Learned counsel invited my attention to some of the averments made in the plaint, written statements and the oral evidence led by the respondent no.2 Shri Kedar Subhash Pandit. Learned counsel also invited my attention to Genealogy of Shripad Pandit who died on 7th November 2006 leaving behind his legal heirs and representatives. His wife predeceased him and died in the year 1999. He had four sons and four daughters. Son Subhash died in the year 1994 and predeceased the said Shripad Pandit. Subhash left behind his wife Urmila Kulkarni and three children who were the original plaintiffs. Shri Shirish Pandit was the original defendant no.3 and died leaving behind his wife Chitra and two sons who were impleaded as

party-defendant nos.3A, 3B and 3C. It is not in dispute that the daughters of the said deceased Shri Shripad Pandit namely Pushpa, Leela, Hema and Anju executed a Release Deed on 25th November 2006 in favour of the appellant nos.1 to 3.

9. It is submitted by the learned counsel that since those four sisters of the appellant nos.1 to 3 had executed the said Release Deed relinquishing their 1/4th share each in favour of the appellants, the appellants become entitled to 7/8th share in the suit property. The respondent nos.1 to 3 were thus entitled to remaining 1/8th share in the suit property. Trial Court however, has held that the appellants and the respondent nos.1 to 3 having 1/4th share each in units/apartments reserved for their joint family and further held that the respondent nos.1 to 3 (original plaintiffs) were entitled to partition, separate possession of their 1/4th share in the suit property.

10. Learned counsel for the appellants placed reliance on the following judgments :-

- i) Judgment of Supreme Court in the case of ***Thamma Venkata Subbamma Vs. Thamma Rattamma, AIR 1987 SC 1775;***
- ii) Judgment of Andhra Pradesh High Court in the case of ***M.Krishna Rao and Anr. Vs. M.L.Narasikha Rao & Ors., AIR 2003 (AP) 498;***
- iii) Judgment of ***L. Sundaram and Ravichandran Vs. Lakshmanana***

(died), L.Sadagopal & Ors., 2003 (1) Mh.LJ. 195;

iv) Judgment of Supreme Court in the case of ***State of Maharashtra Vs. Narayan Rao Sham Rao Deshmukh & Ors., (1985) 2 SCC 321;***

v) Judgment of Supreme Court in the case of ***Mangammal @ Thulasi & Anr. Vs.T.B. Raju & Ors., 2018 (4) ALL MR 941 (SC);***

vi) Judgment of Supreme Court in the case of ***Cherotte Sugathan (died) through Lrs. & Ors. Vs. Cherotte Bharathi & Ors., 2008 (3) ALL MR 829;***

vii) Judgment of this Court in the case of ***Sanjay Purshottam Patankar Vs. Smt.Prjakta Pramod Patil, 2015(5) ALL MR 570;***

viii) Judgment of Madras High Court in the case of ***Shanmugham & Ors. Vs. Saraswathi & Ors., AIR 1997 Madras 226;***

ix) Judgment of Andhra Pradesh High Court in the case of ***Nalla Venkateshwarlu Vs. Porise Pullamma and Anr., AIR 1994 Andhra Pradesh 87;***

x) Unreported judgment of this Court delivered on 14th August 2018 in the case of ***Kishore Tulshiram Mantrim Vs. Dilip Jank Mantri & Ors.*** in Second Appeal No.374 of 2018;

xi) Judgment of Punjab and Haryana High Court in the case of ***Suraj Kaur & Ors. Vs. Ved Prakash and Ors., 2019 (4) R.C.R. (Civil) 661;***

xii) Judgment of Supreme Court in the case of ***Arshnoor Singh Vs. Harpal Kaur & Ors., 2019 ALL SCR 1982.***

11. Learned counsel invited my attention to the issues framed by the Trial Court and also to the order dated 11th March 2019 passed by the learned Trial Judge below Exhibit-A in Special Civil Suit No.1120 of 2016 and would submit that both the parties had agreed before the learned trial Judge that the suit properties were not the ancestral properties of the appellants and the respondents. Learned Trial Judge has accordingly recast the issue no.1 i.e. *“Does suit property is inherited by the plaintiffs and defendants ?”*

12. Learned counsel for the appellants invited my attention to the findings rendered by the learned trial Judge in paragraph 16 of the impugned judgment and decree and would submit that the learned trial Judge has erroneously proceeded on the premise that the suit properties which were subject matter of the Release Deed executed by the four sisters in favour of the appellants were co-parcenary properties and the parties were the co-parceners though all the parties had admitted before the trial Court that the properties were not ancestral properties of the parties.

13. It is submitted by the learned counsel that the entire judgment and decree holding that the respondent nos.1 to 3 (original plaintiffs) would be entitled to 1/4th share is ex facie perverse and contrary to various judgments delivered by the Supreme Court and this

Court relied upon by the learned counsel. It is submitted by the learned counsel that since the suit properties were not the ancestral properties, Deed of Release executed by four daughters were not in favour of the joint family but was exclusively in favour of the appellants. The other family members thus would not be entitled to the benefit of the said Release Deed made by the sisters in favour of the appellants. He submits that renunciation of the share of the sisters thus could not be for the benefit of all other members of the family and thus the share of the sisters would not be distributed amongst all the family members.

14. It is submitted by the learned counsel that the trial Court has totally misinterpreted and wrongly applied the principles laid down by the Andhra Pradesh High Court in the case of ***M.Krishna Rao and Anr. Vs. M.L.Narasikha Rao & Ors. (supra)*** wherein it has been held that Release Deed made in favour of some of co-parceners would enure to benefit of all other co-parceners and not only in favour of those co-parceners in whose favour release deed was made. It is submitted by the learned counsel that the trial Court also misinterpreted and wrongly applied the ratio enumerated by the Madras High Court in the case of ***L. Sundaram and Ravichandran Vs. Lakshmanana (died), L.Sadagopal & Ors.,(supra)*** wherein it has been held that in the Release Deed executed releasing interest in the suit property in favour of some of co-parceners, such release by any co-parcener could be in favour of co-

parcener as body and not in favour of one or more of them.

15. It is submitted by the learned counsel that a Hindu co-parcenary is a narrower body than the joint family. Only males who acquire by birth an interest in the joint or co-parcenary property can be members of the co-parcenary or co-parceners. Male members of a joint family of his sons, grandson and great grandsons constitute a co-parcener who acquire right in the co-parcenary property by birth but his rights can be definitely ascertained only when a partition takes place. When the family is joint, the extent share of a co-parcener cannot be definitely predicated since it is always capable of fluctuating. Such share would increase by the death of a co-parcener and decreases on the birth of co-parcener.

16. It is submitted by the learned counsel that a joint family, however, may consist of female members. It may consist of male member, his wife, his mother and unmarried daughters. The property of a joint family does not cease to belong to the family merely because there is only a single male member in family. A joint family may consist of a single male member and his wife and daughter. It is not necessary that there should be two male members to constitute a joint family.

17. Learned counsel for the appellants strongly placed reliance

on the judgment of the Supreme Court in the case of ***Mangammal @ Thulasi & Anr. Vs.T.B. Raju & Ors., (supra)*** and would submit that any property inherited upto four generations of male lineage from father, father's father or father's father's father i.e. father, grand father etc. is termed as ancestral property. It is submitted that the entire property is held upto four generations of male members constitutes a co-parcenary property. He submits that in this case, none of these conditions were satisfied by the respondent nos.1 to 3 to constitute the suit property as co-parcenary property.

18. Mr.Deo, learned counsel for the respondent nos.1 to 3, on the other hand, does not dispute that Shri Shripad Pandit expired on 7th November 2006 leaving behind four sons and four daughters. He submits that the suit properties were the self-acquired property of the said deceased Shri Shripad Pandit. He does not dispute that the said Release Deed dated 25th November 2006 was executed by four daughters of Shripad Pandit i.e. Pushpa, Leela, Hema and Anju in favour of the appellants relinquishing their 1/4th share each in favour of the appellants. Learned counsel fairly invited my attention to Clause 1 of the said Release Deed which was duly registered and would submit that by the said Release Deed, those four sisters had released, relinquished, surrendered and transferred their undivided share in favour of the appellants exclusively.

19. Learned counsel for the respondent nos.1 to 3 did not deny that the suit properties were not the ancestral properties and that the parties had jointly made a statement before the trial Court on 11th March 2019 that the suit properties were not ancestral properties of the parties. He submits that the trial Court had accordingly recast the issue no.1. Learned counsel for the respondent nos.1 to 3 could not distinguish the judgments relied upon by Mr.Agrawal, learned counsel for the appellants.

REASONS AND CONCLUSIONS :-

20. It is not in dispute that suit properties were self-acquired properties of the said Shri Shripad Pandit who was the father of four sons viz. Subhash, Shashikant, Sharad, Shirish and four daughters viz. Pushpa, Leela, Hema and Anju. Subhash predeceased his father Shripad Pandit and died in the year 1994. It is also not in dispute that parties jointly had made a statement before the Trial Court on 11th March 2019 that the suit properties were not the ancestral properties of the parties to the suit. Trial Court had accordingly recast the issue no.1 which reads as under : -

“Does suit property is inherited by the plaintiffs and defendants ?”

Trial Court recorded a finding on the said issue no.1 in affirmative.

21. A perusal of the judgment and decree passed by the trial Court indicates that the trial Court though had rendered a finding that the suit properties were inherited by the parties had rendered perverse

finding that the suit properties were co-parcenary properties and Release Deed executed by the sisters of the appellants were for the benefit of all the members of the family and not only the appellants. There was no dispute about the execution of the said Release Deed which was produced on record by the appellants.

22. Learned trial Judge strongly placed reliance on the judgment of the Andhra Pradesh High Court in the case of ***M.Krishna Rao and Anr. Vs. M.L.Narasikha Rao & Ors.(supra) & L. Sundaram and Ravichandran Vs.Lakshmanana (died), L.Sadagopal & Ors. (supra)*** and has held that relinquishment of the right and interest by the daughters of Shri Shripad Pandit and Usha was in favour of the entire family and not in favour of the appellants only. Trial Court accordingly held that the respondent nos.1 to 3 were entitled for equal share i.e. 1/4th share each in the family unit reserved for the family of the appellants and the respondent nos.1 to 3. Mr.Deo, learned counsel for the respondent nos.1 to 3 could not support the said finding rendered by the trial Court and could not dispute before this Court that the suit properties were self-acquired properties of Shripad Pandit. A perusal of the record indicates that the learned trial Judge erroneously proceeded on the premise that the Deed of Release by four daughters of Shripad Pandit in favour of the appellants were co-parcenary properties and not his self-acquired properties.

23. Supreme Court in case of ***Thamma Venkata Subbamma*** (supra) has adverted to a passage from Mulla's Hindu Law Fifth Edition, Article 264 i.e. "Renunciation or relinquishment of his share" with approval and has held that a renunciation in favour of one of the coparcener by another is for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made. It is thus clear that the principles laid down by the Supreme Court in the said judgment would apply only if the renunciation in respect of the coparcenary property is made by one of the coparceners in favour of another which would enure for the benefit of all other coparceners and not for the sole benefit of the coparceners or coparceners in whose favour the renunciation is made. In this case, the suit properties were admittedly not coparcenary properties nor the parties were coparceners. Andhra Pradesh High Court in case of ***M. Krishna Rao and Anr.*** (supra) and High Court in case of ***L. Sundaram and Ravichandran*** (supra) has taken the similar view.

24. Supreme Court in case of ***State of Maharashtra v/s. Narayan Rao Sham Rao Deshmukh and Ors.*** (supra) has held that a joint family may consist of female members, it may consist of a male member, his wife, his mother and his unmarried daughters. The property of a joint family does not cease to belong to the joint family merely

because there is only a single male member in the family. A Hindu coparcenary is however, a narrower body than the joint family. Only males who acquire by birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. A male member of a joint family and his sons, grandsons and great grandsons constitute a coparcenary.

25. Supreme Court in case of ***Mangammal @ Thulasi and Anr.*** (supra) has held that any property inherited upto four generations of male lineage from father, father's father or father's father's father i.e. father, grand father etc. is termed as ancestral property. A perusal of the genealogy of Shripad Pandit produced on record does not indicate that the parties to the proceedings are members of the coparceners. They also did not fall under four generations. Suit properties thus even otherwise cannot be considered as ancestral properties. The principles of law laid down by the Supreme Court in case of ***State of Maharashtra v/s. Narayan Rao Sham Rao Deshmukh and Ors.*** (supra) and in case of ***Mangammal @ Thulasi and Anr.*** (supra) squarely apply to the facts of this case.

26. This Court in case of ***Kishore Tulshiram Mantrim*** (supra) after adverting to the judgment of Supreme Court in case of ***Thamma Venkata Subbamma*** (supra) has held that if the properties are self-

acquired and not the ancestral coparcenary properties, would acquire on the death of such person in self-acquired property, they will devolve equally on all his legal heirs and therefore some of the legal heirs can definitely relinquish their share in favour of another legal heir and it should not be necessarily in favour of whole body. In my view, the principles of law laid down by the Supreme Court in the said judgment would squarely apply to the facts of this case. Since, the suit properties were self-acquired properties of the deceased Shripad Pandit, all the legal heirs of the said deceased were entitled to equal share including the four daughters of the said deceased who were sisters of the appellants. The daughters of the said deceased thus were free to relinquish their undivided share in the suit property in favour of the other legal heirs of the said deceased exclusively.

27. In my view, such relinquishment of properties inherited by the legal heirs of the person whose properties were self-acquired properties would not enure for the benefit of all the legal heirs of the said deceased but would enure only for those persons in whose favour such deed of relinquishment/release was executed. The principles applicable to the relinquishment of undivided share by coparceners in favour of another coparcener in respect of ancestral property which relinquishment would enure for the benefit of all the coparceners would not apply in case of the

properties inherited by legal heirs which were self-acquired properties of the deceased. In my view, the learned Trial Judge erroneously applied the principles applicable to relinquishment of undivided share by a coparcener in favour of another coparcener to the properties inherited by the legal heirs of a deceased whose properties were self-acquired.

28. In my view, since the suit properties were not inherited by the four generations of male lineage from father, father's father or father's father's father i.e. father, grand father, the properties even otherwise could not have been termed as ancestral property. The finding of the Trial Court that though deed of relinquishment was executed by the four daughters of the said deceased though in favour of the appellants, same would act for the benefit of all the coparceners is *ex-facie* perverse and contrary to the principles of law laid down by the Supreme Court and this Court. Supreme Court in case of **Arshnoor Singh** (supra) has quoted a passage from Mulla in his commentary on Hindu Law (22nd Edition) at page 129 with approval stating the position with respect to succession under Mitakshara and has held that after the Hindu Succession Act, 1956 came into force, if a person inherits a self-acquired property from his paternal ancestral, the said property becomes self-acquired property and does not remain coparcenary property. Principles laid down by the Supreme Court in the said judgment would apply to the facts of this case.

29. A perusal of the release deed which was produced on record in evidence executed by the four daughters of the said deceased i.e. Pushpalata, Bharti, Hemlata and Varsha clearly shows that they had released all their undivided share right, title and interest in the suit property in favour of the appellant exclusively. Learned counsel for the respondent nos.1 to 3 could not dispute this position. In my view, the respondent nos. 1 to 3 thus would be entitled to only $1/8^{\text{th}}$ share in the suit property and not $1/4^{\text{th}}$ share as erroneously held by the learned Trial Judge. The appellants would be entitled to remaining $7/8^{\text{th}}$ share in the suit property.

30. I therefore pass the following order :-

(a) Impugned judgment and decree dated 11th March, 2019 passed in Special Civil Suit No. 1120 of 2016 by learned 4th Joint Civil Judge, Senior Division, Pune holding that the plaintiff and defendant nos. 1 to 3 are having $1/4^{\text{th}}$ share each in suit property and that the plaintiffs are entitled for partition, separate possession of their $1/4^{\text{th}}$ share in the suit property is set aside. The impugned judgment and decree granting permanent injunction against the appellants (original defendant nos. 1 to 3) from creating third party interest to the extent of $1/4^{\text{th}}$ share of the plaintiffs in the suit property and the partition of the property in respect of $1/4^{\text{th}}$ share of the plaintiffs is also set aside.

(b) It is declared that the plaintiffs would be entitled to 1/8th share jointly in the suit property and will be entitled for partition, separate possession in respect of such undivided 1/8th share of the suit property and also for a permanent injunction against the appellants from creating third party rights to the extent of 1/8th share of the plaintiffs in the suit property including prayer for partition in respect of such share. It is declared that the defendant nos.1 to 3 would be entitled to 7/8th share in the suit property and for partition in respect of their 7/8th share.

(c) Impugned judgment and decree dated 11th March, 2019 is partly modified to aforesaid extent.

(d) First Appeal No. 1773 of 2019 is allowed in aforesaid terms. In view of the disposal of the First Appeal No. 1773 of 2019, Interim Application No.1 of 2019 does not survive and is accordingly disposed off. No order as to costs.

R.D. DHANUKA, J.