

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.765 OF 2018
WITH
CIVIL APPLICATION NO.2768/2021**

Bhausahab s/o Laxman Hinge

= **APPELLANT**
(Orig.Deft.)

VERSUS

1. Mangal Shrimant Supekar
and Ors.

= **RESPONDENT/S**
(Resp.No.1 is
orig.Plttff. &
Nos.2 to 6 are
orig.Defts.)

Mr.Nilkant P.Bangar,Advocate for Appellant;

Mr.SK Shinde,Advocate for Respondent No.1.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 29th November, 2021.

PER COURT :-

1. Present appeal has been filed in order to challenge concurrent judgment and decree by the original Defendant No.1.

2. It is not in dispute that plaintiff and defendant No.1 are daughters and son of one Laxman and defendant No.2. It is also not in dispute that Laxman and his brother Namdeo were heir of one Ambadas. Namdeo is defendant No.3. Laxman died in the year 1974 and in his life time itself there was

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partition between him and defendant No.3. Half share from 8 hectares and 84 Ares, i.e. 4 hectare and 42 Ares, from Gut No.186 situated at village Bhalgaon, Tq. Pathardi District Ahmednagar, came to the share of Laxman. After death of Laxman, the property was inherited by his legal representatives, i.e. the plaintiff, defendant Nos. 1 and 2. It was then contended that deft.No.3 has sold his share to defendant Nos.4 to 6. But the suit is limited for partition and separate possession in respect of half share of Laxman. Though mutation entry No.3229 after death of Laxman is standing in the name of deft.Nos. 1 and 2; yet at the time when Laxman expired, the plaintiff and defendant No.1 were minors. The said entry continued thereafter. Deft.No.1 got married about 15 years ago. In the plaint then the plaintiff contended that defendant No.1 got addicted to liquor and wanted to sell the suit land on or about 7.8.2010 and, therefore, the plaintiff requested him for partition and separate possession, but the defendant Nos.1 and 2 denied. Hence the suit.

3. It can be seen from the record that

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defendant Nos.1 and 2 are the only contesting parties because no prayer was made as against deft.Nos.3 to 6 and they never appeared in the matter. Defendant Nos.1 and 2 are not denying the relationship. But, it is then stated that the plaintiff has no right to ask for partition and she got married prior to 1991. Further, huge expenses of Rs.5,00,000/- were incurred on her marriage and at the time of the marriage, she had relinquished her right in the suit land.

4. After the parties went to trial, the suit was partly decreed on 29.4.2015 by the learned Trial Court. It was declared that the plaintiff, defendant Nos.1 and 2 are having 1/3rd share each in the suit land and the relief of getting it partitioned through Collector and putting her in separate possession, was granted. However, relief of injunction was refused.

5. The defendants challenged the said judgment and decree by filing Regular Civil Appeal No.327/2016 and the learned Ad-hoc District Judge-4, Ahmednagar dismissed the appeal on 27.6.2018.

Hence, this Second Appeal.

6. Heard learned Advocate appearing for respective parties. In order to cut short it can be stated that both of them have made submissions in support of their respective contentions.

7. The only point, that has been agitated is, as the plaintiff got married prior to 1991, she cannot get benefit of amended Section 6 of Hindu Succession Act in 2005. Both the Courts below have wrongly given that benefit to her. However, the law on this point is crystal clear in the case of *Vineeta Sharma Vs. Rakesh Sharma and Ors.*, (AIR 2020 SC 3717), and even the decision that was relied on by this Court in the case of Leelabai wd/o Dagduba Hingne and Ors. Vs. Bhikabai Shriram Pakhare - 2014 (4) Mh.L.J. 312, wherein, after taking into consideration the decision in the case of Ganduri Koteshwaramma and Anr. Vs. Chakiri Yanadi and Anr. - 2012 (1) Mh.L.J.(SC) 613, it was observed that, - "Even though the daughter married before 1994 and the parents died well before coming into force of the new section 6 of The Hindu

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Succession Act, the daughter would acquire equal rights in the coparcenary property in the same manner as that of son and would have the same rights in the coparcenary property as she would have had, if she had been a son."

8. When the point tried to be agitated in the appeal is no more *res integra*, it does not give rise to substantial question of law. The Second Appeal, therefore, stands dismissed.

9. In view of dismissal of the Second Appeal, pending Civil Application for vacating interim relief stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV