

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.738 OF 2018

ANGAD S/O PANDIT MALI AND OTHERS
VERSUS
AKASH ANGAD MALI AND OTHERS

.....
Advocate for applicants : Mr. P. R. Katneshwarkar
Advocate for Respondents No.1 to 4 and 6 : Mr. S. V. Natu.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 26-07-2021.

ORDER :

1. The present appellants are the original defendants who want to challenge the concurrent Judgment and decree passed against them. Present respondents are the original plaintiffs who had filed Special Civil Suit No.28 of 2012 before Joint Civil Judge, Senior Division, Latur for partition and separate possession. The said suit came to be decreed and it was held that the plaintiffs have $1/6^{\text{th}}$ share each in the $1/6^{\text{th}}$ share of defendant No.1 i.e. $1/36^{\text{th}}$ share each in all the suit properties. It was also held that defendants No.1, 2, 4, 5 and 6 have $1/6^{\text{th}}$ share each and defendants No.3(1) to 3(3) together have $1/6^{\text{th}}$ share in all the suit properties. The said decree was challenged by the defendants in Regular Civil Appeal No.107 of 2015 before District Judge-3, Latur. The said appeal came to be dismissed on 03-03-2018,

hence this second appeal.

2. Heard learned Advocate Mr. P. R. Katneshwarkar for appellant and learned Advocate Mr. S. V. Natu for respondents No.1, 2, 3, 4 and 6.

3. It has been vehemently submitted on behalf of the defendants that both the Courts below have not considered the evidence and the law points properly. The defence raised has not been properly considered in which it was categorically pleaded by the defendants that land Gut No.24 is the self-acquired property of defendant No.2. The suit house at Latur is the absolute property of defendant No.6. Further, defendant No.2 had given some portion out of Gut No.24 to defendants No.4 and 5. Defendant No.1 had incurred huge expenses in various litigation between plaintiff No.5 and him, and the entire family had provided the monetary assistance to defendant No.1, therefore, no share was allotted in the family arrangement to defendant No.1. The suit properties were not available for partition and, therefore, the suit ought to have been dismissed, so also the appeal ought to have been allowed, but these points were not considered though the evidence was also led by the defendants to prove their contentions. When the appreciation of the evidence has

been wrongly done and the conclusion has been arrived at on the basis of such wrong appreciation of evidence, it leads to substantial questions of law. He, therefore, prayed for admission of the second appeal and formulation of the substantial questions of law at Serial No.1 to 6 in the appeal memo.

4. Per contra, the learned Advocate appearing for the respondents supported the reasons given by both the Courts below. He submitted that the relationship between the parties is admitted. The learned Trial Judge has given elaborate reasons as to how it cannot be said that the suit properties are the self-acquired properties of some of the defendants. The income used for the purchase of the suit properties was the joint family income. The status of the suit properties is joint family property and, therefore, for the plaintiffs, it is ancestral property. Plaintiffs, therefore, are entitled to get their shares separated. No substantial questions of law are arising in this case.

5. Before turning to the rival contentions it can be seen that defendant No.1 is the husband of plaintiff No.5. On the day the suit was filed, plaintiffs No.1 to 4 who are the children of plaintiff No.5 and defendant No.1, were minors. The agricultural land, as well as

house property, was the suit property. It is an admitted position that plaintiff No.5 had filed various litigation contending that she has been thrown out of the house after ill-treatment by the defendants. The minors have a share in the property and, therefore, she prayed for separation of the same.

6. After going through both the impugned Judgments it can be seen that there is elaborate discussion. Both the Courts below have appreciated the oral evidence as well as have considered each and every document that was produced from both sides. When the relationship was not denied and the defendants had come with a case that it is the self-acquired property, though it was claimed that in the family settlement defendant No.1 was not given share with some intention i.e. he relinquished his share, therefore it was for the defendants to prove their contention. The cross-examination of the witness who was examined on behalf of the defendants i.e. DW.1 Angad has been properly considered. He has not given the source of income of his parents in whose names the agricultural land, as well as house, was purchased. The details of the "*Stridhan*" of defendant No.6 was not given. At one point of time, it was canvassed by the defendants that one Balaji Trust gave 1 Acre land to defendant No.6

for cultivation. She received income and then purchased buffalo. Thereafter, she started a milk business. This was tried to be shown as the separate income of defendant No.6. However, the witness who was examined failed to give the approximate income that was derived by defendant No.6 permitting her to purchase the suit property.

7. The evidence has been properly scanned by both the Courts below and it cannot be the subject matter in the second appeal. When the source of income for purchase of the property as a separate property has not been bought on record, both the Courts below were justified in arriving at a conclusion that the defendants have failed to prove that averment and, therefore, the suit properties are the ancestral properties for the plaintiffs. Definitely, they would get a share from/through defendant No.1. Defendant No.1 has $1/6^{\text{th}}$ share and there is no concrete evidence adduced by the defendants to prove that he has relinquished his share. Though such relinquishment may not require registration, it can be seen that what could have been the approximate cost of his share and what was the expenses that were incurred by him in fighting the litigation against plaintiff No.5 has not been told by DW.1 Angad. Therefore,

that relinquishment part in a family settlement has also not been proved. Computation of share is also legal and appropriate and, therefore, no substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure are arising in this case. In view of the above, the second appeal stands dismissed at the admission stage itself.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.