

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 SECOND APPEAL NO.304 OF 2021

RAVINDRA WILLIAM GAIKWAD AND ANR
VERSUS
KOMAL WILLIAM GAIKWAD AND ORS

...
Advocate for Appellants : Senior Counsel Mr. S. R. Sapkal i/b.
Advocate Mr. A. S. Sakhare
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 29-07-2021.

ORDER :

1. Heard learned Senior Counsel Mr. S. R. Sapkal instructed by Advocate Mr. A. S. Sakhare for the appellants.
2. Appellants are the original plaintiffs who had filed Special Civil Suit No.02 of 2015 before the 2nd Joint Civil Judge, Senior Division, Ahmednagar for declaration and possession. The said suit came to be decreed. It was declared that the plaintiffs and defendant No.5 are the owners of the suit property being heirs of deceased Helen. It was also declared that the sale deed dated 07-05-2008 executed by Dr.William in favour of defendants No.1 to 3 in respect of the suit property is void and illegal. The possession of the defendants No.1 to 3 was held to be illegal in view of the said sale deed and they were directed to hand

over the possession to the plaintiffs and defendant No.5. Original defendants No.1 to 4 filed Regular Civil Appeal No.375 of 2016 before District Court, Ahmednagar. It was heard by learned District Judge-10, Ahmednagar. The appeal came to be partly allowed. The decree passed by the learned Trial Judge was set aside and modified. It was declared that the plaintiffs and defendant No.5 are the owners of the suit property to the extent of 2/3rd share being legal heirs of deceased Helen. It was declared that the sale deed executed by Dr.William on 07-05-2008 in favour of defendants No.1 to 3 was void and illegal. Defendants No.1 to 4 were directed to hand over the suit property to the extent of 2/3rd share to the plaintiffs and defendant No.5. Hence, the second appeal has been filed.

3. Learned Senior Counsel submitted that the facts have not been properly appreciated by the learned First Appellate Court. The learned First Appellate Court has misinterpreted Section 35 of the Indian Succession Act and observed that Dr.William was having 1/3rd share in the suit property as a widower of deceased Helen. It is not in dispute that the suit property was the self-acquired property of Helen William Gaikwad who was the mother of the

plaintiffs. She had purchased it from one Namdeo Rakhmaji Pandit on 20-09-1974 from her salary. Helen expired on 15-02-1978 and, thereafter, the property came to be mutated in the name of her husband Dr. William. However, Dr. William performed second marriage and, therefore, he cannot be said to be a widower and he could not have succeeded to the property left by Helen. Only the plaintiffs could have succeeded to the property left by their mother. The learned Trial Judge was right in decreeing the suit in its entirety. However, the learned First Appellate Court has misinterpreted and extended the alleged right of Dr. William till his death. In fact, he had no authority to sell out the property. The First Appellate Court failed to consider that Dr. William had performed marriage with defendant No.4 on 24-04-1978 that is only after two months of demise of Helen. But then he gave application to the City Survey to enter his name to the suit property on 30-07-1982. When he was already married, he could not have been said to be "Widower" and, therefore, substantial questions of law are arising in this case requiring admission of the second appeal.

4. It is to be noted that the facts are simple. It is not in dispute that the property belong to Helen initially as she had purchased it

from Namdeo Pandit. It appears that though she had purchased that property in 1974, during her lifetime she never got the property mutated in her name, she expired on 15.2.1978. Helen and her husband were Christian and, therefore, their succession would be governed by Indian Succession Act. Section 31 to 49 of the Indian Succession Act deal with provisions in respect of intestate other than Parsis. Section 35 of the Indian Succession Act provides that,

“A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate.”

That means, the similar provision as is applicable when husband dies instate and the widow would get the same rights in respect of her husband's property. Section 33 of the Indian Succession Act would be similarly applicable to the widower i.e. the husband whose wife has expired intestate. Here, Helen has died has died intestate, therefore, as per Section 35 read with Section 33 of the Indian Succession Act, Dr. William would get 1/3rd share and the remaining 2/3rd share will go to the lineal descendants i. e. the children. There is absolutely no provision under the Indian Succession Act divesting the widower from inherited property. Inheritance would open on the

date of death of Helen and then as aforesaid by virtue of Section 35 read with Section 33 of the Indian Succession Act Dr.William being her widower would get 1/3rd share in her property, the plaintiffs would get 2/3rd share. Therefore, this legal point has been properly considered by the learned First Appellate Court. A well reasoned Judgment and decree has been passed. No substantial questions of law are arising in this case as contemplated under Section 100 of the Code of Civil Procedure requiring admission of the second appeal and, therefore, in view of *Kirpa Ram (deceased) through L.Rs. and others vs. Surendra Deo Gaur and others*, reported in 2021 (3) *Mh.L.J.* 250, the appeal is dismissed without framing substantial questions of law.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA J

Digitally signed by
GAWADE VIRENDRA J
Date: 2021.08.17
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