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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.552 OF 2019
WITH
CIVIL APPLICATION NO.11770 of 2018

1. Subhash Pandharinath Sathe
and Ors. = APPELLANTS
(Orig.Defts.)

VERSUS

1. Dwarkabai Mohan Borude & Ors. = RESPONDENT/S
(Orig.Plaintiff)

Mr.SP Salgar,Adv. h/for Mr.NV Gaware, Advocate for
Appellant/s;

Mr.UU Wagh,Advocate for Resp.Nos.1-A & 1-B.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 07/10/2021

PER COURT :-

1. Present appeal has been filed by original
Defendant Nos.1, 4 and 5. Though present appellant
Nos.2, 3 and 6 have been shown to be the
appellants; yet since Vakalatnama of these persons
was not filed, they were transposed as Respondent
Nos.2, 4 and 4 by order dated 21.1.2019.

2. Present original Respondent No.1 —
Dwarkabai had filed Regular Civil Suit No.419/2005
for partition and separate possession before 4th

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Joint Civil Judge, Senior Division, Ahmednagar. The said suit came to be decreed on 12.1.2010. It was declared that the plaintiff has 1/4th share in the suit properties described in Para 1 of the plaint. The defendants jointly have 3/4th share in the suit properties. The plaintiff's share was directed to be separated through Collector. The original defendants filed Regular Civil Appeal No.44/2010 before learned Principal District Judge, Ahmednagar and the appeal was dismissed on 30.3.2017. Hence, this Second Appeal.

3. Heard learned Advocates appearing for the respective parties.

4. It has been vehemently submitted that both the Courts below have not considered the facts properly and, therefore, a perverse finding has been recorded. The period of limitation to file the suit was not properly considered. Original ancestor had expired in the year 1948; yet it has been held that the suit was within limitation. The fact that the plaintiff had relinquished her share, by accepting an amount of Rs.3,000/- at the time of

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sale-deed in respect of the land bearing Survey No. 127 on 16.8.1965, has not been considered at all. It was also not considered that the other branch was not made party to the suit. In fact, the suit property, bearing Gut No.249, was not self-acquired property. It was ancestral property allotted by Government to Pandharinath, Maruti. It was Patil Watan Inam land and after abolition of the Watan, it became exclusive property of Pandharinath, it was not liable to be partitioned, and, therefore, substantial questions of law are arising in this case, requiring admission of the Second Appeal.

5. Per contra, learned Advocate appearing for Respondent No.1-A and 1-B, i.e. legal representatives of original plaintiff, supported the reasons given by both the Courts below and submitted that there is no perversity in the findings. The learned Principal District Judge, Ahmednagar, has considered all the points those were involved in the case, including the limitation, which was, in fact, cursorily considered by the learned Trial Judge, without framing a specific issue. But then a specific

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point was raised by the learned Principal District Judge and all the facts have been considered along with the legal points.

6. At the outset, it is to be noted that the genealogy, which is reflecting in the judgments of both the courts below, is not disputed. Original ancestor was one Lala Dhondi Sathe, who expired on 17.12.1948. He had three sons, viz. Maruti, Kesu and Daulat. Out of them, Maruti pre-deceased Lala Dhondi. Maruti expired in the year 1938. He was survived by his widow – Babai; Pandharinath, who was an adopted son and the plaintiff – Dwarkabai. Babai expired in the year 1966 and Pandharinath expired in 2003. The defendants are the legal heirs of Pandharinath. It is further not in dispute that after death of Lala Dhondi, there appears to be partition between the branch of sons and it has also come on record that deceased Pandharinath had applied for mutation in respect of the suit property, i.e. land bearing Gut No.279, on 21.7.1974 to record half share in the name of Vitthal Daulat Sathe, i.e. legal representative of Daulat. According to the plaintiff, after mother

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expired, till death of Pandharinath, he was giving her share from the suit property. However, after death of Pandharinath, his legal representatives stopped giving the same and, therefore, she filed the suit. The plaintiff had come with a case that, in fact, Pandharinath, Daulat and Kesu had sold the land, admeasuring 5 acres and 34 gunthas, out of the suit property bearing No.236 (Old survey No. 127) for a consideration of Rs.3,000/- to one Gahina Babu Sathe. The suit property, old Survey No. 127, was divided into two parts, i.e. 127/1 and 127/2. Survey No.127/2, i.e. Gut No. 236, went to share of Pandharinath and in fact, the plaintiff had received amount of Rs.3,000/- on 16.8.1965 when the sale-deed was effected in respect of 5 acres and 34 gunthas and she relinquished her share. It is to be noted that the defendants have absolutely not adduced any kind of evidence about relinquishment or receipt of amount of Rs.3,000/-. Unless there would have been right in the property, there could not have been relinquishment. Therefore, indirectly, the defendants were admitting that the plaintiff had share in the suit property. But then she relinquished it in favour

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of Pandharinath and/or Babai, who was then alive in 1965. When the defendants failed to prove the relinquishment, definitely she will have to get share in the property.

7. Another defence was that Gut No.279 was Patil Watan Inam land. However, as regards this defence is concerned, both the Courts below have correctly considered the mutation entry (Exh.25) which showed that an application was moved on 16.7.1949 to Talathi to mutate name of Pandharinath, Kesu Lala and Daulat Lala, which was after death of Lala Dhondi. If that is so, then it cannot be said that the said land was re-granted to Pandharinath after abolition of the Patil Watan in individual name. In fact, it would be for and on behalf of the family. It cannot turn to be self-acquired property of Pandharinath. Therefore, taking into consideration these two aspects, no substantial questions of law are arising in this case as all the points have been properly considered including the point of limitation.

8. Reliance has been placed on the decision

in the case of Kusumgauri Vs. Umiben and Ors. - 1974 DGLS (Gujrat) 65 = 1975 AIR (Guj) 126,

wherein, the question that was raised for determination was, whether, right of maintenance and residence, which a Hindu widow, whose husband has died prior to the coming into force of Hindu Womens Rights to Property Act, 1937, has, can be held the property possessed by her as a limited owner so as to attract the provisions of subsection (1) of Section 14 of the Hindu Succession Act, 1956, was involved. Taking into consideration the facts in that case, it was held that the provisions of Section 14(1) cannot apply to the case and it cannot be said that she became an absolute owner of the property.

. Similar ratio was adopted by this Court in the case of Devidas Udhaio Gaurkar and Ors. Vs. Vithabai Laxman Dhengale and Anr. - 2009 (Supp.) Bom.C.R. 144, wherein it was held that, as plaintiff's father had died in 1935, her case will be governed by Customary Hindu Law and she could not succeed to co-parcenary property of her grandfather with his surviving sons prior to 1956.

9. In the instant case, It is to be noted that Maruti had expired in the year 1938, leaving behind widow and daughter, i.e. the plaintiff. However, then original owner Lala Dhondi was alive. The facts further disclose that after demise of Maruti, his widow had adopted Pandharinath in 1948 with the consent of her father-in-law. No doubt, at the time of adoption, The Hindu Adoption and Maintenance Act, 1956, had not come into force and, therefore, the learned Principal District Judge has taken a note of the doctrine of "Relation back", as reported in in the case of Shripad Gajanan Suthankar Vs. Dattaram Kashinath Suthankar and Ors. - AIR 1974, SC 878, wherein it has been held that, under the Hindu Law, adopted son continues the line of adoptive father for secular and spiritual purposes and when a widow adopts a son to her husband, the doctrine of "Relation Back" makes sonship retroactive from the moment of the death of late husband. The adopted son is deemed to have been born on the date of death of the adoptive father. In view of the same, it will have to be taken that Pandharinath had taken birth in Maruti's family prior to 1938. Now, though after death of

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Maruti, Babai, i.e. his widow, had limited share in the property left behind by her husband. But then, in view of Section 14 of the Hindu Succession Act, she would become an absolute owner of the said property. After her death in the year 1966, the plaintiff, being her daughter, would definitely get share in the same, and, therefore, both the Courts below have properly considered the law point involved and had given separate share to the plaintiff.

10. No substantial questions of law, as contemplated under Section 100 of CPC, are arising in this case, requiring admission of Second Appeal. Hence, the Second Appeal stands dismissed. Pending Civil Application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV