

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.53 OF 2017

SHRI. YESHWANT DINANATH TIWARI
VERSUS
SAU. SNEHAL PRASAD KULKARNI AND ORS

...
Mr. M. M. Bhokarikar, Advocate for appellant.
Mr. V. D. Sapkal, Senior Counsel i/b Mr. S. R. Sapkal, Advocate for
respondent Nos.1 to 3.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12.08.2021

ORDER :-

. Present appeal has been filed by original defendant No.1 challenging the judgment and decree passed in Regular Civil Appeal No.48 of 2015 by learned District Judge-1, Newasa, Dist. Ahmednagar dated 07.09.2016 thereby allowing the appeal filed by present respondent No.1 - original plaintiff, the first Appellate Court has decreed the suit.

2. Present plaintiff filed Regular Civil Suit No.276 of 2010 for partition and separate possession as well as permanent injunction, so also a declaration was prayed that the decree passed in Regular Civil Suit No.405 of 2000 is not binding on her. The said suit came to be

dismissed by learned 2nd Joint Civil Judge Junior Division, Newasa, Dist. Ahmednagar on 20.04.2013. As aforesaid, the original plaintiff filed Regular Civil Appeal No.48 of 2015 and it was allowed by the first Appellate Court. The suit came to be decreed by setting aside the judgment and decree passed by the learned Trial Judge. It was declared that the decree passed in earlier suit i.e. Regular Civil Suit No.405 of 2000 is void and not binding upon the plaintiff. It was declared that the plaintiff and defendant Nos.1 and 2 have 1/3rd share each in the suit property bearing Block No.890/2 admeasuring 2 H 54 R situated at village Kharwandi, Tq. Newasa, Dist. Ahmednagar and the partition was directed to be effected by sending precept to the District Collector. Hence, this second appeal by original defendant No.1.

3. Heard learned Advocate Mr. M. M. Bhokarikar for the appellant and learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. S. R. Sapkal for respondent Nos.1 to 3.

4. It has been vehemently submitted on behalf of original defendant No.1 – present appellant that the first Appellate Court failed to consider that the suit property was not available for partition on the date when the suit was filed. The first Appellate Court failed to consider that the original plaintiff cannot be termed as coparcener considering the

provisions of Hindu law, especially when the partition decree was already passed under the compromise decree dated 07.10.2001. The earlier transaction made by Late Dinanath was not considered at all and wrong interpretation of Section 29-A of the Hindu Succession (Maharashtra Amendment) Act, 1994, has been made. The original owner Dinanath expired on 24.06.2007. The date of birth of original plaintiff is 07.08.1986, then she had completed her 18 years of age on 06.08.2004 and, therefore, the suit filed on 26.04.2010 was beyond the period of limitation. This aspect was not considered at all and, therefore, the decree that has been passed by the first Appellate Court is perverse. Second Appeal deserves to be admitted.

5. Per contra, the learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. S. R. Sapkal for respondent Nos.1 to 3 supported the reasons given by the first Appellate Court and submitted that when the plaintiff was unmarried in 1994 when amendment to Section 29-A of Hindu Succession (Maharashtra Amendment) Act came into force, she had become coparcener and, therefore, when she was entitled to the share in the suit property being the coparcener and she was not party to Regular Civil Suit No.405 of 2000, that decision or compromise is not binding on her. Further, it has been also considered by the learned first Appellate Court that the decree for partition in

Regular Civil Suit No.405 of 2000 was pending for execution and the shares have not been finally decided and/or have not been put in possession to the respective shareholders. Definitely, the suit was maintainable, it was within limitation and it has been rightly decreed by the first Appellate Court by allowing the appeal. No substantial questions of law are arising in this case.

6. At the outset, it can be seen that the relationship between the parties is admitted. The plaintiff and the defendants are the legal heirs of Late Dinanath. Plaintiff as well as defendant Nos.1 and 2 are the children of deceased Dinanath. Defendant No.3 is the widow left by him. Dinanath left Gut No.890/2. Out of that property, he had sold 81 R land in the year 2002 and 1 H 73 R land was remaining. When the plaintiff received notice of Regular Darkhast No.36 of 2008, she came to know that defendant No.1 and Late Dinanath had filed the suit bearing Regular Civil Suit No.405 of 2000 without making plaintiff as well as defendant Nos.2 and 3 parties. Now, the said compromise has been relied by the present appellant, but it is to be noted that defendant No.1 had not explained as to why the plaintiff and defendant Nos.2 and 3 were not made as necessary parties to that proceedings. When the property was ancestral property, then by virtue of Section 29A of the Hindu Succession (Maharashtra Amendment) Act, 1994, all the

daughters became coparceners. Only condition was that they should not have been married on the day of the coming into force of the Act. In other words, all the daughters, who were unmarried, on the day of the commencement of the Act, were held to be the coparceners. Here, in this case, it is admitted that plaintiff got married in the year 2004. Her birth date, which has come on record is 07.08.1986. Therefore, after the amendment to Section 29A of the Hindu Succession (Maharashtra Amendment) Act, 1994 had come into force, the plaintiff had become coparcener and, therefore, she was definitely a necessary party to Regular Civil Appeal No.405 of 2000. In fact, the further fact is also required to be noted is that Dinanath expired on 24.06.2007. In view of the central amendment to the Hindu Succession Act in the year 2005, all the daughters became co-owners and the law on the point has been crystallized in ***Vineeta Sharma Vs. Rakesh Sharma and Ors., (AIR 2020 SS 3717)***. The learned first Appellate Court has relied on the decision in ***Prakash and others Vs. Phulvati and others, [2016(1) Mh.L.J. 1]***, which was the then position of law. Now, in view of ***Vineeta Sharma (Supra)***, even if the father is not alive, the daughter would be the coparcener and, therefore, the view taken by the learned first Appellate Court is perfectly correct and legal. He has not carved out the share of defendant No.3, as she was the second wife of deceased Dinanath. The

shares those have been carved out between the plaintiff and defendant Nos.1 and 2 i.e. the children left by Dinanath as 1/3rd each is correct. It requires no interference.

7. Since the substantial questions of law are not arising in this case; in view of *Kirpa Ram (deceased) through Lrs. and others Vs. Surendra Deo Gaur and others*, [2021 (3) Mh.L.J. 250], second appeal stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

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