

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.219 OF 2019
WITH
CIVIL APPLICATION NO.1918 OF 2016
WITH
CIVIL APPLICATION NO.95 OF 2015**

1) Popat Pandurang Madane
Age-54 yrs., Occ: Agriculture,
2) Narayan Pandurang Madane,
Age: 54 yrs., Occ: Agriculture,
3) Kisan Pandurang Madane,
Age: 50 yrs., Occ: Agriculture,
4) Pralhad Pandurang Madane
Age: 50 yrs., Occ: Agriculture,
All R/o Kanher, Tal: Malshiras,
Dist. Solapur

... Appellants

Vs

1) Sakhubai Jagu Bodare
S/D Through her L.R.s:

1A) Bhanudas Jagu Bodare,
Age-59 yrs., Occ: Agriculture,
1B) Muralidhar Jagu Bodare
Age: 57 yrs., Occ: Agriculture,
1C) Kalawati Jagu Bodare,
Age: 64 yrs., Occ: Household,
1D) Lochana Rama Chavan,
Age: 62 yrs., Occ: Household,
All R/o Mandave, Tal: Malshiras
Dist. Solapur

2) Madhukar Pandurang Madane,
Age: 46 yrs., Occ: Agriculture,
3) Shamrao Pandurang Madane,
Age: 44 yrs., Occ: Agriculture,

4) Eknath Jagu Shinde,
Age: 54 yrs., Occ: Agriculture
5) Ananda Jagu Shinde,
Age: 54 yrs., Occ: Agriculture
All R/o. Paryanti, Tal: Man,
Dist. Satara

... Respondents

...

Mr. Vishwanath S. Talkute for the Appellants.

Mr. Laxman K. Kalel for the Respondent Nos.1A to 1D.

CORAM : SANDEEP K. SHINDE J.
DATE : 18th MARCH, 2021.

ORAL JUDGMENT :

Sakhubai Jagu Bodare instituted the Regular Civil Suit No.128 of 2003 for partition. Pending suit, Sakhubai died. Her legal representatives are Respondent Nos.1A to 1D in this appeal. The suit was decreed on 26th February, 2007. The decree was confirmed in Regular Civil Appeal No.253 of 2010. It is against the decree in the Appeal, defendant nos. 8 to 11 have preferred the Second

Appeal.

FACTS:

2 Savla Madane was common ancestor. He died in 1948. He was survived by widow Radhabai, Pandurang (Son) and Sakhubai (Daughter). After Savla's death, suit property was devolved on Radhabai and Pandurang. Radhabai died in 1972. Sakhubai is claiming half share in the property of her mother, Radhabai. It appears, Pandurang's wife, Parubai had filed suit for partition being Regular Civil Suit No.209 of 1992 to which Sakhubai was not a party. The said suit was decreed on 15th October, 1993. Sakhubai instituted the suit in February, 2003. It may be stated that suit properties in the present suit were, also the suit properties, in the suit instituted by Parubai Madane.

3 Mr. Talkute, learned counsel for the appellants disputed, 'the date of death', of Savla. He submitted that

Savla died before 1937 and not in 1948. Nevertheless, as to how and why 'death day', of Savla is relevant, has not been argued. Herein, Plaintiff (Sakhubai) is claiming right in the suit property through her mother Radhabai. As stated above, Radhabai, died in 1972, who had 50% share in the suit property. Thus, in consideration of these facts, in my view, date of Savla's death, is immaterial in as much as, in terms of Section 14 of the Hindu Succession Act, 1956, character of the properties possessed by Radhabai (Wife of Savla) would be, her absolute property. The next submission is that in a suit instituted by Parubai (Wife of Pandurang, and brother of Sakhubai), shares, were determined and some of the sharers disposed of their shares. Submission is that, suit properties in the suits instituted by Parubai and Sakhubai are same and sharers are common. It is, therefore, submitted that sharers, who have disposed of their shares received in the suit instituted by Parubai, would be benefited twice and would also reduce the share of other family members who have not transferred their shares,

therefore, while determining shares in the present suit, appropriate adjustments in the shares be directed.

4 It may be stated that particulars of execution of partition effected in the Suit No.290 of 1992 are not before this Court nor particulars of shares allegedly disposed of by the co-sharers and to whom shares were transferred, are also not placed before this Court. In view of this fact, the contention of Mr. Talkute cannot be accepted.

5 In consideration of the facts of the case and for the reasons stated, appeal does not give rise to any substantial question of law. Appeal is dismissed. All civil applications therein are also disposed of.

(SANDEEP K. SHINDE, J.)