

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.626 OF 2020

Shri.Digambar Dhondu Patil & Ors.

..Appellants

V/s.

Shri.Vilas Laxman Surve & Ors.

..Respondents

Mr.Pravin Dabade i/b Ms.Hemangi D. Pathare.

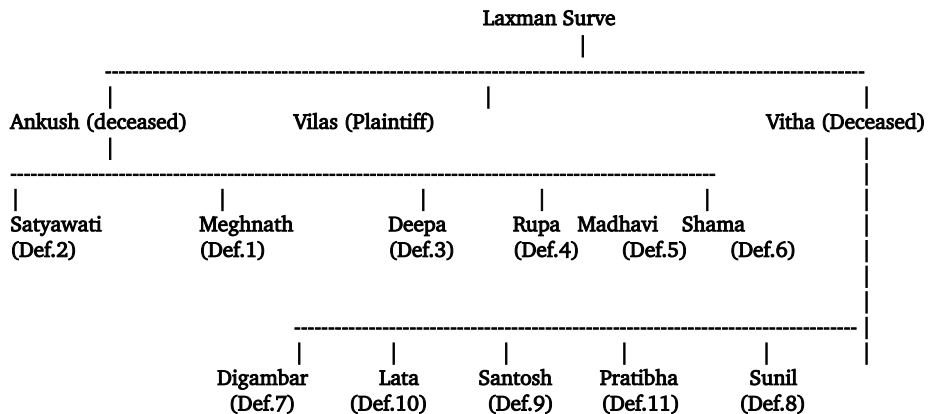
CORAM : C.V. BHADANG, J.

DATE : 14th JANUARY 2021

PC.

1. Heard learned counsel for the appellants.

2. The respondent No.1 Vilas Surve filed RCS No.88 of 2012 for partition and separate possession of several lands which were subject matter of dispute. In order to appreciate the contention raised it would be necessary to reproduce the genealogy of parties as under:-



The present appellants are original defendant Nos.7 to 11 and legal heirs of Vithabai Surve.

3. The learned Trial Court by a judgment and decree dated 28th July 2015 partly decreed the suit as under :-

“1. Suit is partly decreed. No order as to costs.

2. It is declared that the plaintiff has 1/3rd share, the defendants No.1 to 6 have 1/18th share each and the defendant No.7,9 to 11 have 1/15th share each, the defendant No.8A to 8C have 1/45th share each in the suit properties mentioned in plaint.

3. The decree shall be sent to the District Collector, Ratnagiri to effect partition of the suit properties mentioned in the plaint and to put the plaintiff and defendants in possession of their respective shares therein, as per provision of section 54 of the Code of Civil Procedure, 1908.

4. Decree be drawn accordingly.”

4. It was the respondent No.1 (Original Plaintiff) who being dissatisfied with the shares granted challenged the same before the learned District Judge in Civil Appeal No.56 of 2017. It is necessary to note that the appellants did not challenge the decree of the learned Trial Court as in all probability they were satisfied with the same. The appeal came to be partly allowed by a judgment and decree dated 07th August 2019 in the following terms.

“1. The appeal is partly allowed.

2. The judgment and decree passed on 28-07-2015 by 3rd Joint Civil Judge (J.D.) in Regular Civil Suit no.88 of 2012 decreeing the suit of partition though maintained, but the shares as crystallized by learned trial Court are modified as under.”

The clause 2 of the decree and the Judgment is quashed and set aside and in place of it, it is declared that the plaintiff/appellant has 4/9th share, the defendants 1 to 6 together shall have 4/9th share and the defendants/respondent Nos.7 to 11 together shall have 1/9th share in the suit properties mentioned in the plaint.

It is clarified further that the branch of defendants 7 to 11 in which the defendant Nos.7,9, 10 and 11 each will have 1/9th divided by 5 = 1/45th share each and the defendant/respondent Nos.8A to 8C each shall have the share of 1/45th divided by 3 each = 1/135 i.e. 1/135th share each. Therefore, the branch of original plaintiff will have 4/9th , the branch of defendant Ankush will together have 4/9th and the branch of deceased Vitha will together have 1/9th share.

3. Remaining part of the decree in operative clause 3 of the impugned decree and judgment is confirmed.

4. Considering the facts, no order as to costs.

5. In above terms, decree be drawn accordingly.”

5. It can thus clearly be seen that, in fact, in the appeal, the share' allotted to the present appellants i.e. the original defendant No.7 to 11 has gone up from 1/15th as granted by the Trial Court to 1/9th share granted by the learned Appellate Court. It is thus difficult to see as to how the appellants can be said to be

aggrieved, particularly when they have chosen not to challenge the judgment and decree passed by the learned Trial Court. Thus the appeal does not involve any substantial question of law and it is accordingly dismissed.

C.V. BHADANG, J.