

**Sneha
N.
Chavan**

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

SECOND APPEAL NO. 424 OF 2018

Keshav Pundalik Gaikwad & Ors.	..Appellants
Vs.	
Sangita Dilip Bachhav	..Respondent

Mr. Shriram S. Kulkarni, for the Appellants.

CORAM : C.V. BHADANG, J.

DATE : 25th FEBRUARY, 2021

PC.

1. The challenge in this appeal is to the judgment and order dated 13.11.2017 passed by the learned District Judge at Nasik in Civil Appeal No. 115 of 2016. By the impugned judgment the District Judge while dismissing the appeal filed by the appellants has confirmed the Judgment and Decree dated 16.06.2016 passed by the learned Civil Judge Junior Division at Satana in Regular Civil Suit No. 77 of 2006, thereby decreeing the suit for partition and separate possession filed by the respondent.

2. The facts necessary for the disposal of the appeal may be stated thus:

The respondent filed the aforesaid suit for partition and separate possession of the suit properties which comprise of land Gut No. 221/1 of village Vinchure, Taluka Baglan, District – Nashik more specifically described in the plaint. The respondent happens to be the daughter of the appellant No.1 Keshav Gaikwad from his first wife Gunjabai. The appellant No.2 Sumanbai, is the second wife of Keshav and appellant Nos. 3 and 4 are the children born to Sumanbai from Keshav. The respondent sought partition by separation of her 1/5th share.

3. It appears that the suit was resisted *inter alia* on the ground that an amount of Rs.25,000/- was paid to the respondent and her mother Gunjabai in lieu of maintenance as well as the share in the joint family property. It was also contended that an amount of Rs.1,00,000/- was spent on the marriage of respondent. An issue of limitation was also raised.

4. The learned Trial Court framed in all seven issues. The parties led oral and documentary evidence.

5. The learned Trial Court answered the Issue No.1 and Issue Nos. 2 to 5 in the negative and decreed the suit by granting 1/5th share to the respondent.

6. Feeling aggrieved, the appellants challenged the same before the learned District Judge. The learned District Judge by the impugned judgment has dismissed the appeal.

7. I have heard Mr. Kulkarni, the learned counsel for the appellants. Perused record.

8. The only contention raised on behalf of the appellants is that the respondent in her cross-examination had admitted that the suit land was standing in the name of her father and mother. He, therefore, submitted that the suit property cannot be the ancestral/joint family property.

9. In my considered view, the contention cannot be accepted, inasmuch as, the said part of the cross-examination does not take the case of the appellants any further. A perusal of the issues framed would show that there was no dispute about the nature of the suit property. All that the respondent had stated is that the suit property

being Gut No. 221/1 was standing in the name of her father and mother. She expressed ignorance whether the said property was purchased by her father in the name of the mother or not. Even otherwise the revenue entries, which are essentially for fiscal purpose cannot decide the nature of the property. Perusal of the judgment of the Trial Court would indicate that it was not disputed that the suit property was the ancestral property of the appellant no.1 (defendant no.1). In my considered view, both the courts below, after considering the evidence on record have rightly granted 1/5th share to the respondent particularly when the factum of the first and second marriage of Keshav is not in dispute as well as *inter se* relationship between the parties is not in dispute.

10. The appeal does not raise any substantial question of law and is accordingly dismissed with no order as to costs.

11. A decree be drawn accordingly.

C.V. BHADANG, J.