

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.313 OF 2018

Yogeshwar S/o Ramchandra Selokar
(Dead) Through his Legal
representatives

1. Smt. Hemlata Wd/o Yogeshwar Selokar,
Aged about 65 years, Occ. Cultivator,
R/o Walni, Tahsil Pauni and Dist.
Bhandara.
2. Sau. Jyoti W/o Gangadhar Patre,
Aged about: 45 years, Occ. Cultivator,
R/o Dhandala, Tahsil Mauda, Dist.
Nagpur.
3. Sau. Bharti W/o Yashwant Bhure,
Aged about: 43 years, Occ. Cultivator,
R/o Mangli, Tahsil Pauni, Dist.
Bhandara.
4. Nilesh @ Linesh S/o Yogeshwar
Selokar,
Aged about: 40 years, Occ. Cultivator,
5. Mithun S/o Yogeshwar Selokar,
Aged about 38 years, Occ. Cultivator,
Appellant Nos.4 and 5 are R/o Walni,
Tahsil Pauni and Dist. Bhandara.

... Appellants
(Ori. Defendants)
(On R.A.)

// VERSUS //

1. Rajeshwar S/o Ramchandra Selokar
(Dead) Through his legal representatives,
- A. Smt. Indubai Wd/o Rajeshwar Selokar,
Aged about 66 years, Occ. Household,
- B. Lomesh S/o Rajeshwar Selokar,
Aged about 47 years, Occ. Cultivator,

- C. Mitravande S/o Rajeshwar Selokar,
Aged about 45 years, Occ. Cultivator,
Respondent Nos.1 to 3 are R/o Nehru
Ward, Post Walni, Tahsil Pauni and Dist.
Bhandara.
- D. Sau. Gayatri W/o Jagdish Katekhaye,
Aged about 42 years, Occ. Cultivator,
R/o Behind A.S.M. Traders, near
Railway track, Khat Road, Bhandara,
Tehsil and Dist. Bhandara.
2. Anusayabai W/o Vilasrao Hudake,
Aged about 65 years, Occ. Household,
R/o Hanuman Ward, Hinganghat, Tahsil
Hinganghat, Dist. Wardha.
3. Pushpa W/o Gopalrao Revatkar,
Aged about 63 years, Occ. Household,
R/o Sant Krupa Society, near Getal
Convent, Sant Tukdoji Ward, Nandura
Chowk, Tahsil Hinganghat, Dist. ... Respondents
(Ori. Plaintiffs)
(On R.A.)
Wardha.

Shri S.O. Ahmad, Advocate for Appellants.
Shri R.A. Gupte, Advocate for the Respondent Nos.1 (A to D).

CORAM : ANIL S. KILOR, J.

DATED : 30 NOVEMBER, 2021.

ORAL JUDGMENT

This appeal has arisen out of a judgment and decree passed by the Principal District Judge, Bhandara dated 25.04.2018 in Regular Civil Appeal No.31 of 2015 allowing the appeal preferred by the plaintiff and thereby setting aside the judgment and decree dated 05.02.2015 passed in

Regular Civil Suit No.52 of 2009 by the Civil Judge Junior Division, Pauni, dismissing the suit for partition and separate possession.

2. Brief facts of the present case are as follows: (The parties are referred as per their status before the trial Court).

It is the case of the plaintiff that defendant No.1 is a real brother and defendant Nos.2 and 3 are real sisters of the plaintiff. Ramchandra Shrawan Selokar is the father of the plaintiff, defendant No.1 and defendant Nos.2 and 3. Ramchandra Shrawan Selokar was owner and possessor of agricultural land at Mouza Walni bearing Survey No.14,304,602. Jainabai is wife of Ramchandra Selokar who was mother of the plaintiff, defendant No.1 and defendant Nos.2 and 3. She was owner and possessor of agricultural land situated at Village Walni bearing No.30 and Survey No.209 situated at Village Asgaon. Ramchandra died on 18.05.2006 and Jainabai died on 27.12.2001. So names of plaintiff, defendant No.1 and defendant Nos.2 and 3 were recorded in revenue record by way of succession being legal heirs of deceased as joint owners. The defendant Nos.2 and 3 relinquished orally their share in favour of the plaintiff and defendant No.1, in the year 2006. The agricultural land in possession of defendant No.1 is in excess than his share. The plaintiff requested to defendants for partition but they did not pay any heed.

Therefore, the plaintiff is entitled for half equal share. Hence, he has submitted the suit for partition and separate possession.

The defendant No.1 has submitted his written statement below Exh.27. During pendency of this suit defendant No.1 died. His legal heirs were brought on record. As per pursis Exh.46 they have adopted written statement of deceased defendant No.1 and resisted the suit.

The suit was dismissed by the learned trial Court vide judgment and decree dated 05.02.2015 which was assailed in Regular Civil Appeal No.31 of 2015 which came to be allowed vide impugned judgment and decree dated 25.04.2018 which is the subject matter of the present appeal.

3. I have heard Shri Ahmad, learned counsel for the appellants and Shri Gupte, learned counsel for the respondent Nos.1 (A to D).

4. None for the respondent Nos.2 and 3 though served.

5. On 29.06.2018, while issuing notice in this appeal this Court has framed following substantial question of law.

“The trial Court having held that field Gat Nos.16, 17 and 491 were not self acquired properties of Ramchandra and having dismissed the suit for partition on the ground that said properties were not included in the suit, whether the appellate Court was justified in decreeing the suit without reversing that finding?”

6. Shri Ahmad, learned counsel for the appellant has drawn attention of this Court to para 12 of the judgment dated 05.02.2015 passed by the learned trial Court, in which it has held that the plaintiff has not submitted any document to show that Gat No.16, 17 and 491 were self-acquired properties of father Ramchandra, but it is received by Ramchandra in partition. As per partition-deed at Exh.89 some landed properties were kept by Ramchandra. The plaintiff failed to prove that Gat No. 16, 17 and 491 are self-acquired properties. But these gat numbers are not included in this suit for partition. Accordingly, the suit was rightly dismissed.

7. He further submits that the learned lower Appellate Court while reversing the judgment and decree passed by the trial Court has not given any reasons for reversing the above referred finding in para-12 of the judgment of the trial Court. He submits that the first appeal is a continuation of suit and therefore, the learned lower Appellate Court is duty bound to give justifiable reasons as per the law, while reversing the finding recorded by the trial Court. It is pointed out that no such reasons have been recorded by the learned lower Appellate Court in this matter while reversing finding recorded by the learned trial Court, in respect of Gat No.16, 17 and 491.

8. Shri Gupte, learned counsel for the respondent Nos.1 (A to D) supports the impugned judgment and decree and submits that after considering the oral as well as documentary evidence, the Court has rightly decreed the suit in favour of the plaintiff.

9. To consider the rival contentions of the parties, I have perused the record and gone through the judgments and decree of both the Courts below.

10. In the case of *Malluru Mallappa (Dead) through Legal Representatives Vs. Kuruvathappa and others*¹, the Hon'ble Supreme Court of India has observed thus:

“13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all question of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions.”

11. Looking to the substantial questions of law framed in this matter, it is relevant to refer to paragraph-12 of the judgment of the trial Court, which reads thus:

¹ (2020) 4 SCC 313
C.L.Dhakate

“12. As per partition deed Exh.89 in between Ramchandra Selokar, Jainabai W/o Ramchandra Selokar and their two daughter i.e. defendant Nos.2 and 3, their two son i.e. the plaintiff and deceased defendant No.1 partition of property took place. To the plaintiff share Gat No.36, 278, 258, 514 of village Walni were given in partition. To deceased defendant No.1 Gat No.60, 92, 2 and Gat No.134 of village Walni were given in partition. Rest of property were kept by Ramchandra Selokar for himself, Jainabai and defendant Nos.2 and 3. Ramchandra Selokar and Jainabai Selokar are died. As per evidence of defendant No.1-D he has stated in cross-examination that Gat No.16, 491 and 17 were kept by Ramchandra on his name. These Gat No.16, 17 and 491 were in name of son of the plaintiff. The plaintiff has stated in his cross-examination that he has no knowledge Gat No.16, 17, 491. When came to name of his son Mitra, Ramesh and Manoj. He has no knowledge by which document name of his son is recorded in respect of Gat No.16,17,491 when father of plaintiff Ramchandra kept Gat No.16,17 and 491 for himself it means it is Ramchandra’s property. The plaintiff has not submitted any document to show that Gat No.16,17,491 were self acquired property of his father Ramchandra. But it is received to Ramchandra in partition. As per partition deed Exh.89 some landed property were kept by Ramchandra. The plaintiff failed to prove that Gat No.16,17,491 are self acquired. But these gat number are no included in this suit for partition.”

12. However, after going through the judgment passed by the learned lower Appellate Court, I could not find any reasons recorded by the learned lower Appellate Court while reversing of the above referred finding recorded by the trial Court.

13. Shri Gupte, learned counsel for the respondent Nos.1 (A to D) also failed to point out reasons recorded by the learned lower Appellate Court, while reversing the aforesaid finding recorded by the trial Court.

14. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the learned lower Appellate Court for deciding the same, afresh.

15. I have answered the substantial question of law accordingly in above terms.

16. Accordingly, I pass the following order:

ORDER

- i] The appeal is allowed.
- ii] The judgment and decree passed by the Principal District Judge, Bhandara in Regular Civil Appeal No.31 of 2015 dated 25.04.2018 is hereby set aside and the matter is remanded back to the Principal District Judge, Bhandara to decide it, afresh.
- iii] It is requested that the appeal shall be decided within six months from the date of receipt of the certified copies.
- iv] No order as to costs.

[ANIL S. KILOR, J.]