

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 541 OF 2018

1. Sau. Uttarabai Vinodrao Bhuyar,
Aged 48 years, Occu: Agriculturist,
R/o Manora, Dist. Washim.
2. Sau. Nanda Hemantrao Bayaskar,
Aged 38 years, Occu: Agriculturist,
R/o Bitrargaon, Tah. Umarkhed,
Dist. Yavatmal.

.... **APPELLANTS.**

// VERSUS //

1. Ganesh Shankarrao Bansod,
Aged 40 years, Occu: Service,
R/o Akkewarwadi, Tukum, Nirman Nagar,
Chandrapur, Tah. & Dist. Chandrapur.
2. Anil Shankarrao Bansod.
Aged 44 years, Occu: Agriculturist,
R/o Nanded Bk. Tah. Daryapur,
Dist. Amravati.
3. Uddhao Laxmanrao Pawar,
Aged 40 years, Occu: Agriculturist,
R/o Nanded Bk., Tah. Daryapur,
Distt. Amravati.

.... **RESPONDENTS.**

Shri A.A.Dhawas, Advocate for Appellants.

CORAM : ANIL S. KILOR, J.
DATED : DECEMBER 02, 2021

ORAL JUDGMENT :

1. This is an appeal arising out of the judgment and decree dated 30/01/2018 passed in Regular Civil Appeal No. 106 of 2009 by the District Judge-1 at Achalpur dismissing the appeal preferred by the plaintiff challenging the dismissal of the suit for declaration and separate possession vide judgment and decree dated 31/07/2009 passed in Regular Civil Suit No. 09 of 2002 by the Joint Civil Judge Junior Division, Daryapur.

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

3. The appellants/plaintiffs filed a suit for declaration, partition and separate possession. It is the case of the plaintiff that

the defendants and the plaintiffs are the brothers and sisters. The deceased Shankar was their father who died on 10/03/1990 and deceased Leelabai was their mother who died on 20/12/1993 and left behind them the suit fields (1) Gat No.64 admeasuring 1 H 76 R of Mouja Ghuikhed, Tq. Daryapur, Dist. Amravati, (2) Gat No.206 admeasuring 2 H 25 R of Mouja Nanded Bk. Tq. Daryapur, Dist. Amravati. They also left behind them the suit houses (1) House bearing No.267-248 admeasuring 748-850 sq.ft. of Mouja Nanded Bk. Tq. Daryapur Dist. Amravati, (2) House bearing No. 268-249 admeasuring 748-850 sq.ft. of Mouja Nanded Bk. Tq. Daryapur, Dist. Amravati.

4. It is the case of the plaintiffs that the suit properties are self acquired properties of their father and after the death of their parents the plaintiffs and defendant Nos. 1 and 2 became owners of the suit fields and the houses.

5. It is further submitted that no partition had taken place between the plaintiffs and defendant Nos. 1 and 2 regarding the suit

fields and the houses. However, defendant Nos.1 and 2 have sold out some of the properties mentioned in the suit vide Sale Deed dated 30/07/1998 and without any right or authority. Therefore, declaration to the effect that the said Sale Deed is not binding on the plaintiff.

6. The defendant No.1 appeared in the suit and filed written statement and admitted the claims of the plaintiffs. The defendant No.2 could not file his written statement, however, the defendant No.3, who is the purchaser of the part of the suit property, filed his written statement and resisted the claim of the plaintiffs. It was submitted by the defendant No.3 that the partition was effected by metes and bounds amongst defendant Nos. 1 and 2 with the consent of the plaintiffs and he purchased half of the land from defendant No.2 which came in the share of defendant No.2 and remaining half share and the defendant No.1 out of the suit field.

7. The learned trial Court dismissed the suit of the plaintiffs on the ground that all the properties of their father were not

included in the suit properties while claiming partition vide judgment and decree dated 31/07/2009.

8. Feeling aggrieved by the same, the plaintiffs carried an appeal before the District Judge-1 at Achalpur vide Regular Civil Appeal No.106 of 2009.

9. The learned lower appellate Court confirmed the judgment and decree passed by the trial Court and thereby dismissed the appeal vide judgment and decree dated 30/01/2018. The said impugned judgment and decree is under challenge in the present appeal.

10. I have heard Shri Dhawas, learned counsel for the appellants.

11. Shri Dhawas, learned counsel for the appellants states that both the Courts below have committed an error in dismissing the suit on a ground of not sustainable in the eyes of law. It is submitted that the evidence recorded by both the Courts below on

the ground of maintainability are perverse and this Court may interfere with it by setting aside the impugned judgment and decree and thereby decreeing the suit.

12. To consider the contentions raised by the appellants, I have gone through the record and also perused the judgments of both the Courts below.

13. The learned counsel for the appellants is not disputing the fact that the plaintiffs have not joined entire property of their father in the suit. In absence of all the properties joined to the suit for partition it is difficult to find out share of the plaintiffs. Accordingly, both the Courts below have held that the suit in the form, as it was filed, was not maintainable.

14. Moreover, after considering the evidence available on record, oral as well as documentary, the learned lower appellate Court has held that the plaintiffs got their share out of the properties of their father as per old Section 6 of the Hindu Succession Act and

new Section 8 of the Hindu Succession Act. Both the Courts have also held that there was a partition took place between the plaintiff and defendant Nos.1 and 2 regarding suit fields after the death of their parents and accordingly, the suit was dismissed.

15. A co-ordinate Bench of this Court in the case of *Govindrao ..vs.. Dadarao @ Shrawan*¹ has held in paragraph No.17 as under:

“17. It may be pertinent to note that the rule that a partition suit should embrace of the joint family property is recognized and firmly applied in order to bring the equitable partition by metes and bounds. If the rules were not recognized and firmly applied, the multiplicity of litigation would be the inevitable result. If the suit for partial partition is allowed to be instituted in fragments, the jurisdiction of the trial Court and the forum of appeal might be altered; it might be of paramount importance to a party litigant whether he should have a first appeal or a second appeal to the High Court, and whether it should at all be permitted to seek the judgment of the Judicial Committee with regard to the matters in controversy. The rule further ensures a just partition; parties might otherwise be greatly prejudiced as regards equitable distribution, retention of possession, liability for improvements, and adjustment of accounts. Therefore, in the present case, it is not possible to accept the contention of the learned counsel for the plaintiff that the suit for partial

1 2004(4) Mh.L.J. 653

partition of the properties owned by the joint family is maintainable, without bringing into the common hotchpotch the entire joint house property of the parties. Therefore, it is quite obvious that authorities on which reliance placed by the learned counsel for the plaintiffs is totally misconceived and cannot be accepted.”

16. In view of the above referred well settled principle of law, I do not find any error in findings recorded by both the Courts below holding that the suit is not maintainable and in absence of all the properties joined in the suit for partition.

Accordingly, as no substantial question of law is involved in this appeal, the appeal is **dismissed**. No order as to costs.

(ANIL S. KILOR, J)

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