

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**SECOND APPEAL NO. 883 OF 2018
AND
CA/14409/2018 IN SA/883/2018**

Bhaskar Dada Gaware and others

.. Appellants

VERSUS

Abasaheb Bhaskar Gaware and others

.. Respondents

...
Mr. C.V. Dharurkar, Advocate for appellants
Mr. A.D. Sonkawade, Advocate h/f. Mr. A.V. Hon, Advocate for
respondents no. 1 to 3, 5 to 7
Mr. A.S. Mirajgaonkar, Advocate for respondents no. 8 to 11
Respondent no. 4 served – absent
...

CORAM : MANGESH S. PATIL, J.

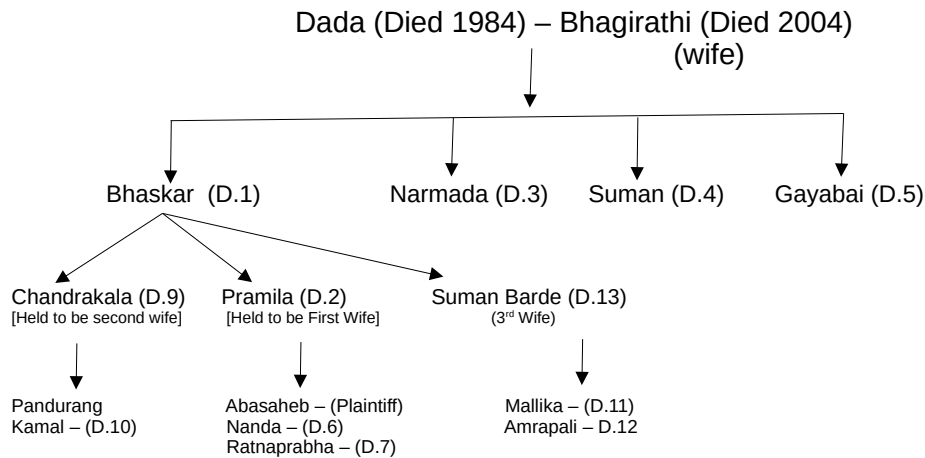
**RESERVED ON : 20 JANUARY 2022
PRONOUNCED ON : 27 JANUARY 2022**

ORDER :

This is a second appeal by the original defendants no. 1, 9 and 8 being aggrieved and dis-satisfied by the judgment of the trial court in a suit filed by the respondent no.1 – original sole plaintiff for general partition and separate possession of his share in the suit properties which has subsequently been confirmed by the appellate court partly, which has revised the shares and allotted the shares only in some of the properties. They are aggrieved by the unanimous findings of the courts below holding that appellant no. 2 – Chandrakala is not the legally wedded wife of appellant no. 1 – Bhaskar and that the appellant no. 3 is their illegitimate child and holding respondent no. 2 – Pramila to be his legally wedded wife.

2. I have heard the learned Advocates of both the sides on the point of admission.

3. It would be appropriate to first of all reproduce the genealogy of the parties.



For the sake of convenience, the parties would be hereinafter referred to by their names.

4. Going by the pleadings of the parties, the basic issue that was framed and decided by the trial court and confirmed by the appellate court is, as to whether it is Chandrakala or Pramila, the legally wedded wife of Bhaskar. So far as the paternity of Pandurang, Kamal, Abasaheb, Nanda, Ratnaprabha, Mallika and Amrapali is concerned, no dispute was raised about Bhaskar being their father.

5. The learned Advocate for the appellants would vehemently submit that clinching evidence demonstrating that Chandrakala had already married to Bhaskar in the year 1968 and was his first wife was ignored by both the courts. The marriage between them was also registered, *albeit* in the year 2013. As against this, there was no proof

of any marriage between Bhaskar and Pramila. In spite of such evidence in favour of the appellants, the courts below have arrived at an unsustainable conclusion about Pramila and not Chandrakala to be the legally wedded wife of Bhaskar.

6. The learned Advocate would further submit that assuming that Chandrakala is not a legally wedded wife of Bhaskar and Pandurang is their illegitimate son, still, by virtue of provisions of section 16(3) of the Hindu Marriage Act, 1955, he would be entitled to claim a share in the parent's property. Now that the right and share of such illegitimate child is a subject matter which has been referred to a larger Bench of the Supreme Court in the matter of Revanasiddappa and another V. Mallikarjun and others; (2011) 11 SCC 1, the right and share to be received by not only Pandurang but even by Kamal, Mallika and Amrapali would depend upon the outcome of the decision by the larger Bench. Therefore, atleast to this extent, the second appeal deserves to be admitted.

7. The learned Advocate Mr. Sonkawade h/f. Mr. Hon for respondents submits that this being a second appeal, there are no circumstances which would enable this Court to interfere in the concurrent findings of facts arrived at by the courts below. They have consistently held that Pramila is the legally wedded wife of Bhaskar and not Chandrakala. The conclusions were arrived at by correct appreciation of the evidence on the record. There is absolutely no

perversity in such appreciation of the evidence and consequently, there is no reason why this Court should now enter into that controversy.

8. I have carefully considered the rival submissions and perused the papers including the judgments cited at the Bar.

9. So far as the issue regarding legitimacy of appellant – Pandurang and his other siblings is concerned, as has been mentioned earlier, both the courts below have consistently held Pramila to be the legally wedded wife of Bhaskar. The claim of the appellants that Chandrakala is his legally wedded wife has been turned down.

10. The appellants led evidence in the form of certificate of registration of marriage between Bhaskar and Chandrakala. However, admittedly, such a record was brought into existence for the first time during pendency of the suit before the trial court. Though they claimed that the marriage had taken place in the year 1968, no reason is forthcoming in the evidence to demonstrate as to why at no earlier point of time, steps were taken for registration of the marriage. Not only this but even during cross-examination, Bhaskar (DW-1) specifically admitted that he had taken such steps just to help him in the suit and he had acted at the insistence of appellant – Pandurang who is an advocate. Meaning thereby, this piece of evidence which has been clearly created during the pendency of the suit for a specific purpose, has met the treatment it deserved, at the hands of the courts below, who have refused to rely upon it.

11. So far as the other evidence is concerned, except the highly interested statement of Bhaskar (D.W. 1) no other evidence was led before the trial court to substantiate the factum of any marriage between him and Chandrakala. On the contrary, during his cross-examination, he specifically admitted that he solemnized marriage with Pramila.

12. True it is that the appellants were simultaneously relying upon the fact that Bhaskar and Chandrakala have been living together for years together and even begotten couple of children i.e. Pandurang and Kamal and the society accepted them as husband and wife. However, during his cross-examination, he specifically admitted the fact that he was having illicit relations with number of women. The villagers were calling him names for having such illicit relations not only with Suman but also with Chandrakala. If such is the state-of-affairs, this admission would clinchingly demonstrate that the society was not ready to accept Bhaskar and Chandrakala to be a man and his wife so that any presumption could have been deduced by such conduct.

13. Though not in so many words, both the courts below have rightly understood the effect of such admission while reaching a concurrent conclusion about Chandrakala being not the legally wedded wife of Bhaskar. Since this is a finding of fact recorded on the basis of the evidence discussed herein-above, this Court cannot venture into

the arena in view of the inherent limitation on its powers under section 100 of the Code of Civil Procedure.

14. The question that now survives is, assuming that Pandurang and Kamal who are children born to Chandrakala from Bhaskar and Mallika and Amrapali who are the daughters of Suman born from him, being illegitimate children, what rights do they have in view of section 16(3) of the Hindu Marriage Act, 1955.

15. Suffice for the purpose to observe that deviating from the earlier views in the matter of Jinia Keotin and others V. Kumar Sitaram Manjhi and others; (2003) 1 SCC 730 and Bharatha Matha and another V. R. Vijaya Renganathan and others; (2010) 11 SCC 483, in the matter of Revanasiddappa and another V. Mallikarjun and others (supra), the issue as to the rights of the illegitimate child under section 16(3) of the Hindu Marriage Act, 1955 only to have a share in the parent's property and not the ancestral property, has been referred to a larger Bench of the Supreme Court which decision is still awaited.

16. Needless to state that depending upon the decision of the larger Bench, there would be a fluctuation of shares of all these illegitimate children of Bhaskar. Therefore, to this limited extent and not in respect of the concurrent findings regarding Chandrakala being not the legally wedded wife of Bhaskar, this Appeal deserves to be admitted on the following substantial question :

- (I) Whether in the facts and circumstances, by virtue of section 16(3) of the Hindu Marriage Act, 1955, Pandurang, Kamal, Mallika and Amrapali can claim a share in the suit properties which are held to be ancestral and joint family properties ? If yes, what is their share ?

17. In view of such admission of the second appeal, the execution and operation of the judgment and decree under challenge shall stand stayed till decision of the Second Appeal. Simultaneously, even the appellants shall not create any third party interest in the suit properties till final disposal of the second appeal.

18. Civil Application no.14409 of 2018 is disposed of.

[MANGESH S. PATIL]
JUDGE

arp/