

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.1274 OF 2019
(NOT ON BOARD)**

IN

SECOND APPEAL (STAMP) NO.24637 OF 2019

WITH

CIVIL APPLICATION NO.1181 OF 2019

IN

SECOND APPEAL (STAMP) NO.24637 OF 2019

Thakubai Manaji Bhor And Ors.

...Applicants

vs.

Nanda Ashok Kavade And Ors.

...Respondents

....

Mr. Priyal G. Sarda, for the Applicants.

....

CORAM : S.M. MODAK, J.

DATE : 23 AUGUST 2022

P.C. :

Civil Application No.1274 of 2019

Though Civil Application No.1274 of 2019 is not listed on board, that is tagged to the second appeal. As per the oral request on behalf of the Applicants/Appellants, it is taken on board.

2. The proceedings have already abated against Respondent Nos. 3 and 5. Notice is served to Respondent Nos. 1, 2 and 4 but they

have not appeared. There is a delay of 96 days in preferring the second appeal. For the reasons stated in para nos. (3), (4), (5) and (6), prayer clause (a) is granted.

3. The civil application is disposed of.

CIVIL APPLICATION NO.1181 OF 2019

Heard learned Advocate Mr. Sarda for the Applicants, who were defendant nos. 1 to 4 and 6. The appeal stands abated against Respondent No.3-Dashrath and Respondent No.5-Dnyanabai as per the conditional order passed by learned Registrar (Judicial-II) dated 21 February 2020. It is submitted that Respondent Nos. 3 and 5 were defendant nos. 7 and 10. Notice is served on Respondent No.1, 2 and 4 but they have not appeared.

2. The suit was filed by one Sairandra, who is Respondent No.2 before this Court. There are properties described in Schedules A to D. In respect of Schedules A and B properties, she has claimed ownership exclusively and, alternatively, she has asked for partition of the property. Whereas trial court held that properties described in Schedule A (remaining land), Schedules C and D are joint family properties. The trial court declared the shares and ordered for partition. Trial court has dismissed the claim of the plaintiffs for partition of Schedule B land as it was acquired by the Government for dam.

3. First appeal was filed by defendant no.11-Nanda. Though the present Appellants have filed cross-objections, initially, the first appellate court has not entertained it and this Court in a writ jurisdiction passed certain observations before another cross-objection was filed. However, the first appellate court has not made any observations about their merits as observed in para nos. 1 to 15 of the impugned judgment. Now, by way of this appeal, these defendants were asking for equal shares as that of a son and they want to place reliance on the observations of the Hon'ble Supreme Court in *Vineeta Sharma vs. Rakesh Sharma*¹.

4. It is submitted that execution proceedings is filed by the plaintiff numbered as Regular Darkhast No.2 of 2002. According to the Appellants, if the preliminary decree is executed, the decree holders will get more share pending this appeal and that there is a prayer for staying the execution of a decree.

5. So far as property described in Schedule C is concerned, defendant no.11-Nanda is declared as owner by the first appellate court. It is submitted that these Appellants are not challenging that part of decree and even it is not mentioned in their cross-objection. So their prayer is restricted to Schedule A (remaining land) and Schedule D land.

6. It is true that the cross-objections filed by these Appellants

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are not decided by the first appellate court on merits. Learned Advocate Mr. Sarda submitted that in view of the reason of pronouncement in case of *Vineeta Sharma*, still this Court can decide the claim of these defendants.

7. In view of the above, the following order is passed:

Interim relief is granted in terms of prayer clause (b) only in respect of the properties described in Schedules A (remaining area) and D till the next date.

(S.M. MODAK, J.)