

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

SECOND APPEAL NO. 126 OF 2022

Dattatraya s/o Narayan Yogewar

Vs.

Sou. Annapurna Sakharam Tondare

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. P.D. Randive, Advocate for appellant.

Mr. Rohit Joshi, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 04.05.2022.

By this second appeal, the appellant (original defendant) who is brother of the respondent (original plaintiff) is before this Court challenging judgment and order dated 06.01.2022 passed by the District Judge – 2, Pusad (hereinafter referred to as ‘appellate Court’), whereby the appellate Court has dismissed the appeal and allowed the cross objection of the respondent, thereby declaring that the respondent i.e. original plaintiff is entitled to half share in the suit property.

2. The respondent filed suit for partition and separate possession, stating that the father of the parties had purchased property and on 22.05.1998,

he died. It was claimed that after the death of the father, the respondent and the appellant were entitled to half share each in the suit property.

3. The appellant resisted the suit by filing written statement but, he did not deny the fact that the father had purchased the property prior to his death on 22.05.1998. One of the objections raised was on the aspect of limitation, contending that the suit filed in the year 2011 was barred by limitation.

4. The Court of Civil Judge Junior Division, Himmatkhed, (hereinafter referred to as the 'trial Court') passed judgment and order dated 05.05.2017, holding that the suit was filed within limitation. But, proceeding on the basis that Section 6 of the Hindu Succession Act, 1956 was applicable the trial Court concluded that the respondent was entitled to 1/3rd share in the suit property, while the appellant was entitled to 2/3rd share.

5. The appellant filed first appeal before the appellate Court challenging the said judgment and decree, claiming that the trial Court had erred in appreciating the law pertaining to the manner in which the shares ought to have been determined and allotted to the rival parties. The respondent filed

cross objection, claiming that she was entitled to half share in the suit property.

6. The appellate Court passed judgment and order dated 06.01.2022 and upon appreciating the material on record, found that it was undisputed that the father had died intestate. By applying general Rule of succession under Section 8(a) of the aforesaid Act, the appellate Court found that the parties were entitled to equal share as brother and sister. It was categorically held that there was no question of applicability of Section 6 of the aforesaid Act. Yet, the appellate Court proceeded to discuss the position of law, assuming that section 6 of the aforesaid Act was applicable. By taking into consideration latest judgment of the Hon'ble Supreme Court in the case of ***Vinita Sharma vs. Rakesh Sharma and others AIR 2020 SC 3717***, the appellate Court concluded that even as per the said position of law, the respondent was entitled to half share in the suit property. Accordingly, the appeal filed by the appellant herein was dismissed and the cross objection of the respondent was allowed in above terms.

7. In the present appeal, Mr. Randive, learned counsel appearing for the appellant

submitted that the Courts below failed to appreciate the effect of Section 29-A of the said Act applicable in the State of Maharashtra and its interplay with the amendment of Section 6 of the said Act in the year 2005. It was submitted that even the latest judgment of the Hon'ble Supreme Court in the case of *Vinita Sharma(supra)* did not refer to and deal with the effect of Section 29-A of the said Act, as applicable in the State of Maharashtra. On this basis, it was submitted that substantial questions of law arose in the present appeal for consideration. It was further submitted that the material on record indicated that the plaintiff was of unsound mind and that she had approached the Court below through her son as her power of attorney holder and in that regard mandatory requirements of Order 32 Rule 1 to 14 were not complied with. On this basis, it was submitted that the present appeal deserved to be entertained.

8. On the other hand, Mr. Rohit Joshi, learned counsel appearing for the respondent submitted that in the present case there was no question of applicability of Section 6 of the said Act. Therefore, the questions sought to be raised on behalf of the appellant were wholly irrelevant. It

was submitted that only Section 8 of the aforesaid Act is applicable, which the appellate Court correctly appreciated and hence, while dismissing the appeal of the appellant herein, the cross objection of the respondent was correctly allowed. On the question of alleged unsoundness of mind of the respondent, it was submitted that there were neither any pleadings nor any evidence to that effect. The aforesaid issue therefore, did not arise in the present appeal.

9. This Court has perused the judgments and orders passed by the two Courts below. A perusal of the plaint and written statement clearly shows that nowhere in the pleadings was it claimed that either the suit property was ancestral property or that it was purchased by the father through nucleus of the joint family property. The pleadings indicate a simple case of property left behind by the father who had purchased the same during his life time. Considering the pleadings on record, this Court finds that the appellate Court was justified in concluding that in the present case, general rule of succession under Section 8(a) of the aforesaid Act applied and accordingly, the parties being brother and sister were entitled to half share each in the suit property. This Court is in

complete agreement with the said finding rendered by the appellate Court and therefore, there is no question of applicability of Section 6 of the aforesaid Act to the facts of the present case. Accordingly, it is found that the questions of law sought to be raised on behalf of the appellant regarding the effect of Section 29-A of the said Act applicable in the State of Maharashtra to Section 6 of the said Act as amended Act in the year 2005, do not arise.

10. As regards the aspect of alleged unsoundness of mind of the respondent, it is found that there is neither any pleading nor any evidence to that effect on record. This issue was not raised before the two Courts below and therefore, there is no substance in the contention raised on behalf of the appellant in that regard.

11. In view of the above, it is found that no substantial questions of law arise in the present appeal. Accordingly, the appeal is dismissed.

JUDGE

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