

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

SECOND APPEAL NO.211 OF 2022

Smt. Sangeeta Bhagwan Kamble

Vs.

Sakharam Maruti Kamble (Dead) 1-i) Smt. Panchasheela Devanand Borkar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Moon, Advocate for appellant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 05/09/2022

1. Heard Mr. Moon, learned counsel for the appellant who submits, that the impugned judgment dated 2.9.2013 passed by the learned trial Court (pg. 28) and the judgment dated 15.7.2021 passed by the learned Appellate Court are incorrect and are based upon an incorrect burden of proof cast upon the plaintiff, and therefore a substantial question of law arises.

2. The above contention has to be considered in light of the suit which was filed. Regular Civil Suit No.128 of 2011 was a suit filed by the wife (appellant) claiming a declaration under Section 108 of the Evidence Act that her husband Bhagwan Sakharam Kamble had left the matrimonial house in 2003 and was not heard of for more than seven years, and therefore sought a decree of declaration to pronounce him as dead. In the suit, the appellant examined herself at Exh. 17-C (pg.33 of the

paper book provided by the learned counsel for the appellant) and stated that her husband had developed illicit relations with one Shantabai Rathod with whom he had eloped in the year 2003. Since he had not returned back, on 16.11.2003 a complaint was lodged with Police Station Deoli and in spite of search the husband of the appellant was not found. It is further stated that since the respondent nos. 1 and 2 had started harassing her the appellant left the matrimonial home and since 12.3.2007 was residing with her parents at Yavatmal. The statutory period under Section 108 of the Evidence Act having expired the suit was filed.

3. PW-2 Narayan Sakharamji Kamble brother of Bhagwan Kamble was also examined who deposed that he had not seen Bhagwan Kamble, since 2003. On behalf of the respondent DW-2 Vitthal Mahadev Gadge was examined who deposed that approximately three months prior to his evidence on Tuesday in the weekly Bazar at Kalamb he had suddenly met Bhagwan Kamble who after conversing with him for about 5 to 10 minutes had went away. At that time, he was not aware of the proceedings being filed and approximately 15 days before his evidence when he had come to Deoli village for meeting one Devibai sister of Bhagwan Kamble he had informed her about meeting Bhagwan Kamble. In his cross-examination, nothing has been brought out except that he was deposing at the behest of Devibai.

Since the DW-2 has categorically stated about meeting Bhagwan Kamble, in the weekly Bazar at Kalamb approximately three months prior to his deposition, the requirement of Section 108 of the Evidence Act insofar as it casts a burden upon the respondent of proving that Bhagwan Kambe was alive, stands satisfied, in view of which, I do not see that there is any substantial question of law involved in the present second appeal.

4. The Second Appeal is therefore dismissed.
No costs.

JUDGE

Sarkate