

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

SECOND APPEAL NO.119 OF 2021

(Ramshankar s/o Jaipal Patle (dead) thr. L.R's & ors. Vs. Bayatrabai w/o Dhanulal Chouhan)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.S. Mardikar, Advocate for the appellants.
Shri S.G. Karmarkar, Advocate for the respondent.

CORAM : M.S. KARNIK, J.
DATED : APRIL 29, 2022.

Heard.

2. The appellants are the original defendants. The respondent – Bayatrabai is the original plaintiff. The plaintiff – Bayatrabai is the sister of defendant Nos.1 to 3. Defendant Nos.4 to 5 are the children of Umashankar and defendant No.6 is the widow of deceased Umashankar. Umashankar is the deceased brother of plaintiff and defendant Nos.1 to 3. Bayatrabai filed the suit for partition claiming $\frac{1}{5}^{\text{th}}$ share in the suit properties. The trial Court decreed the suit and held that Bayatrabai is entitled to $\frac{1}{5}^{\text{th}}$ share in the suit property. The defendant Nos.1 to 3 are held entitled to $\frac{1}{5}^{\text{th}}$ share each. The legal heirs of Umashankar i.e. defendant Nos.4 to 6 are held entitled to $\frac{1}{15}^{\text{th}}$ share each in the suit property. The defendants aggrieved by the decree of the trial Court filed appeal before the first appellate Court. The first appellate Court concurred with the findings of the trial Court and dismissed the appeal.

3. Learned counsel for the appellant invited my attention to the findings recorded by the first appellate

Court as well as the trial Court. He was at pains to point out that the Courts below have concurrently erred in recording a finding that the property which is sought to be partitioned is an ancestral property. Learned counsel tried to make out a case that the properties are self acquired properties of Jaipal, since deceased.

4. My attention is invited to the various sale-deeds which are executed and placed on record, some of them being Exhibit 41, 93 and 94 which according to the learned counsel indicate that the property in question was purchased by Jaipal who is the father of the plaintiff and defendant Nos.1 to 3. It is further pointed out that by a partition deed at Exh.28, the self acquired property of Jaipal was partitioned during the lifetime of Jaipal in between the defendant Nos.1 to 3 and the legal heirs of Umashankar.

5. Learned counsel for the appellant submitted that the plaintiff was duly compensated at the time of her marriage in 1967. She was given 100 grams gold and money to purchase 5 acres land which she accepted in lieu of her share in the joint family property. Learned counsel for the appellant, therefore, submitted that the first appellate court as well as the trial Court was not justified in inferring that the property is a joint family property in the hands of Jaipal only because the predecessors of Jaipal are 'Malgujars'.

6. Learned counsel for the respondent, on the other hand supported the concurrent findings recorded by the Courts below.

7. I have gone through the findings recorded by the first appellate Court as well as the trial Court. The trial Court referring to exhibit 28, which is the partition deed relied upon by the defendants, came to the conclusion that the partition deed itself shows that the property which was partitioned is a joint family property. The Courts below referred to the recitals in the partition deed to observe that the property in question indicates that the same is an ancestral property. Relying upon the recitals in the document of partition Exh.28, the Courts below had no hesitation in finding that the nature of the suit property as being ancestral. The recitals are reproduced in paragraph No.19 of the judgment of the appellate Court. I have gone through the recitals and see no reason to take a view different from the one taken by the first appellate Court. Apart from that, the appellate court has relied upon the stand taken in the written statement in paragraph Nos.12 and 13 filed on behalf of the defendants.

8. I find that in paragraph No.12 of the written statement, the defendants claimed that the suit properties were self acquired properties of deceased Jaipal whereas in paragraph No.13, the defendants claimed that Jaipal was the karta of the joint hindu family property and defendant Nos.1 to 3 and deceased Umashankar were coparceners of ancestral undivided joint hindu family property. In order to establish that the properties are the self acquired properties of Jaipal, no separate income source of Jaipal is brought on record to show that he had the means to purchase the suit

property without the help of joint family property. It is apparent that Jaipal was the karta of the Joint family. In order to establish that the plaintiff has been adequately compensated at the time of marriage, there is absolutely no evidence on record to support this contention. The exclusion of the plaintiff from getting a share in the suit properties is illegal. The plaintiff is entitled to her share in the suit properties. Having gone through the well considered judgments of the courts below, I find that there is no substantial question of law involved in the present appeal.

9. Consequently, the appeal stands dismissed.

(M.S. KARNIK, J.)

**DB*