



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 43 OF 1997

1. Babibai Gokul Halgaonkar,
Deceased Through LR.s,
 - 1.A Ramesh S/o Gokul Halgaonkar,
Age 51 years, Occu. Service,
R/o House No.236, Sonsale Lane,
Bhingar Camp, Ahmednagar.
 - 1.B Santosh S/o Gokul Halgaonkar,
Age 43 years, Occu. Service,
R/o House No.236, Sonsale Lane,
Bhingar Camp, Ahmednagar.
 - 1.C Prashant S/o Gokul Halgaonkar,
Age 40 years, Occu. Service,
R/o House No.236, Sonsale Lane,
Bhingar Camp, Ahmednagar.
 2. Asaram Eknath Sonsale,
Age 47 years, Occu. Service,
R/o as above.
- ... Appellants.

Versus

1. Mohan Limbaji Halgaonkar,
Deceased Through LR.s,
Barka Wd/o Mohan Halgaonkar
Died through respondent
Nos.1A to 1E are LR.s
- 1.A Alka W/o Digambar Naravane,
(Alka d/o Mohan Halgaonkar),
Age Major, Occu. Household,
R/o Shri Datta Hotel,
Infront of Bus Stand, Kukana,
Tq. Nevasa, Dist. Ahmednagar.
- 1.B Rekha W/o Ganesh Naravane,
(Rekha d/o Mohan Halgaonkar),
Age Major, Occu. Household,
R/o Shri Datta Hotel,

Infront of Bus Stand, Kukana,
Tq. Nevasa, Dist. Ahmednagar.

- 1.C Nandkumar S/o Mohan Halgaonkar,
Age Major, Occu. Service,
R/o House No.98, Sonsale Lane,
Bhingar Camp, Ahmednagar.
- 1.D Dnyaneshwar S/o Mohan Halgaonkar,
Age Major, Occu. Service,
R/o Shri Datta Hotel,
Infront of Bus Stand, Kukana,
Tq. Nevasa, Dist. Ahmednagar.
- 1.E Mukta W/o Sunil Ulhane,
(Mukta d/o Mohan Halgaonkar),
Age Major, Occu. Household,
R/o Bide Wada, Maal Lane,
Bhingar, Ahmednagar.
- 2. Govind Limbaji Halgaonkar,
Deceased Through LR.s,
- 2-A Vimal Govind Halgaonkar,
Age 45 years, Occu. Household,
R/o Naiku Nagar, Bhingare Nagar,
Pathardi Road, Ahmednagar.
- 2-B Sangita Madhukar Vibhute,
Age 27 years, Occu. Household,
R/o Madhukar Vibhute House,
3316, Navale House, Budhwar Peth,
Nashik.
- 2-C Kum. Manisha Govind Halgaonkar,
Age 23 years, Occu. Education,
R/o Naiku Nagar, Bhingare Nagar,
Pathardi Road, Ahmednagar.
- 2-D Manjusha Govind Halgaonkar,
Age 11 years, Occu. Education,
R/o As above.
- 2-E Yogesh Govind Halgaonkar,
Age Major, Occu. Nil,
U/g. of real mother
Smt. Vimal Govind Halgaonkar.

3. Gokul Limbaji Halgaonkar,
Age 48 years, Occu. Service,

All respondent Nos.1 to 3
R/o Sonsale Lane, Bhingar Camp,
Ahmednagar.
4. The Cantonment Board,
Ahmednagar.

... Respondents.

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Advocate for Appellants : Mr. A. S. Bajaj, Mr. M. S. Pallod.
Advocate for Respondent Nos.1a to 1e, 2-a, 2-c, 2-b, 2-d, 2-e :
Mr. P. R. Nangare.

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CORAM : S. G. MEHARE, J.
DATE : 13.12.2023

ORAL JUDGMENT :-

1. Heard the learned counsel for the appellants and the learned counsel for the respondents.
2. The appellants are the original plaintiffs. The plaintiffs and defendants were close relatives. There was no dispute that one Chimnaji owned the suit property. The plaintiffs and defendants were his legal heirs. Chimnaji owned two houses. By the family arrangement, one house was in possession of Eknath, the father of the defendant Asaram, and another was in possession of Tanabai D/o Chimnaji. One son of Chimaji, Namdeo, died instate. The plaintiffs filed the suit for declaration and possession, claiming that Tanabai got a share

in the suit house. The succession certificate was issued in her name after the death of Namdeo. The plaintiffs had a case that the defendants were the tenants in the suit house bearing cantonment house No.236. The plaintiffs had claimed the exclusive title over the suit house. However, the plaintiffs' suit was dismissed. In an appeal against the said judgment and decree, the First Appellate Court in Regular Civil Appeal No.197 of 1991 held that both houses were the joint property inherited from Chimnaji. Therefore, the plaintiffs cannot claim the exclusive title over the suit house and dismiss the suit as a whole. Dissatisfied with the judgment, the original plaintiffs came before this Court. This Court has formulated the following questions of law on 21.07.2009, as follows :

(i) Whether the first appellate Court was justified in dismissing the appeal after holding entitlement of the plaintiff in respect of his share in the ancestral property ?

(ii) Whether the first appellate Court was justified in refusing to grant declaration of ownership in respect of property, in accordance with the entitlement of the plaintiff, to claim share thereof ?

3. Learned counsel for the appellants would submit that the learned First Appellate Court erred in dismissing the suit as a

whole. Once it is held that the parties were entitled to shares in the ancestral property, the suit ought not to have been dismissed as a whole by denying the declaration of the title or interest in the suit property. He also argued that the Courts ought to have declared that the plaintiffs were the owners of the suit property.

4. Learned counsel for the respondents would submit that the judgment impugned before the Courts are legally correct and proper. Barely refusing the suit for declaration would not affect the rights of the plaintiffs to have a share in the suit properties and the other properties of Chimnaji. There is nothing to consider in this case.

5. The arguments of the learned counsel for the appellants express the apprehension that due to the dismissal of the suit for declaration as a whole, the plaintiffs may face difficulty if the partition suit is filed. It is clarified that the Courts have correctly held that the legal heirs of Chimnaji have shares and interests in the property he owns. So, barely dismissing the suit would not disentitle the plaintiffs to claim the share if any suit for partition is filed. In view of the arguments advanced and the judgments pronounced by the Courts, this Court answered question No.1 that the Court was justified in dismissing the

appeal after holding the entitlement of plaintiffs in respect of the share in the ancestral property and question No.2 is answered that refusing to grant the declaration of ownership as a whole would not affect the right of the plaintiffs to have a share in the suit property and would not bar the suit or defence that plaintiffs have no share in the suit property.

6. For the above reasons, the Court concludes that there is no substance in the second appeal. Hence, the following order :

ORDER

- (i) The second appeal stands dismissed.
- (ii) No order as to costs.
- (iii) R & P should be returned to the learned Court of the first instance.
- (iv) It is made clear that any of the parties are at liberty to file an application for mutation of the names of all legal heirs of Chimnaji to the Cantonment Board.

(S. G. MEHARE, J.)

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