



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

903 SECOND APPEAL NO.199 OF 2016
WITH
CA/2888/2016 IN SA/199/2016

1. Vasant Trimbak Bhagure,
Age; Major, Occ; Agri,
2. Dinesh Vasant Bhagure,
Age; Minor, Occ : Education,
Through his legal guardian father
i.e. Appellant No. 1,
Both R/o; At Post Kasli,
Tq. Kopargaon, Dist. Ahmednagar. ...Appellants
(Orig. Defts.)

VERSUS

- 1) Alka Vasant Bhagure, (Died)
Through Lrs.
- 2) Sarika Vasant Bhagure,
Age; 32 years, Occ; Household,
- 3) Sagar Vasant Bhagure,
Age; 26 years, Occ; Tractor Driver,
- 4) Prashant Vasant Bhagure, (Died)
His Legal representatives is
Respondent No. 2 & 3,
All R/o; at Post Andarsul,
Tq. Yeola, Dist. Nashik. ...Respondents
(Orig. Pltffs.)

...

Advocate for the appellants : Mr. Shailesh S. Chapalgaonkar
Advocate for Respondent Nos. 2 & 3 : Mr. N.D. Sonawane

...

CORAM : KISHORE C. SANT, J.

DATE : 30.11.2023.

PER COURT :

1. Heard the parties. The present Second Appeal is preferred by the original defendant Nos. 1 & 2, challenging the judgment and order passed by the learned District Judge-1, Kopergaon in RCA No. 7 of 2007, confirming the judgment and order passed by the learned CJSD, Kopergaon dated 12.12.2006 passed in Special Civil Suit No. 11 of 2004.

2. The learned trial Court by way of judgment and order, partly decreed the suit for partition holding plaintiff Nos. 1 to 4 and defendant No. 1 entitled to 1/5th share each in the suit land Gut No. 179/1, ad-measuring 3 Hectors 16 Are, situated at village Kasli, Tq. Kopargon, District Ahmednagar. Defendant No. 1 was perpetually restrained from alienating the suit property beyond his share till the plaintiffs get their separate share by effecting partition.

3. Defendant No. 2 was not held to be entitled to the share relied on finding that he was illegitimate son and cannot be considered as a co-parcener. The said finding and the

judgment is confirmed by the learned appellate Court.

4. Now the learned Advocate for the appellant submits that the position is now settled by the Hon'ble Apex Court in the case of Revanasiddappa & Anr. Vs. Mallikarjun & Ors. in Civil Appeal No. 2844 of 2011. The Hon'ble Apex Court has held that even illegitimate child has right in Hindu joint family property and in the ancestral property. The said position is not disputed by the other side. A prayer therefore, is, made to dispose of the Second Appeal in view of law as laid down by the Hon'ble Apex Court as there is no dispute on the formal position.

5. The learned Advocate Mr. Sonawane, further informs that now the plaintiff Nos. 1 to 4 died during the pendency of Regular Appeal and therefore, the property was divided in 1/3rd share each in the appeal.

6. He further submits that during pendency of this appeal defendant No. 1 has transferred land to the extent of 20R and has also obtained loan by creating charge on the property. He submits that the decree not to be modified. In view of this

position, this Court finds that an appeal can be disposed off by modifying the decree. It is held that the original plaintiff Nos. 2 and 3 and defendant Nos. 1 and 2 are entitled to 1/4th share each from the suit property. It is clarified that the property which is transferred of 20 Are will be treated as from share of defendant No. 1. The charge created on the property will be treated only as charge on the share of property of defendant No. 1 and he will be liable to pay the loan amount. Decree is thus modified accordingly. With this the Second Appeal stands disposed off. In view of disposal of the appeal, pending Civil applications, if any, are disposed off. Appeal is allowed as indicated above. Decree be drawn up accordingly.

(KISHORE C. SANT)
JUDGE

mahajansb/