

SPChauhan

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 108 OF 2021
WITH
CIVIL APPLICATION NO. 2194 OF 2021

Urmila Uttam Patil and another ... Appellants

Versus

Mirabai Uttam Patil Died
Sangita @ Mina and others ... Respondents

....
Mr. A.S. Savale – Advocate for Appellants

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CORAM : GAURI GODSE, J.

DATE : 01st February, 2023

PER COURT :

1. This Second Appeal is preferred by original defendant nos. 2 and 3 for challenging the concurrent decree for partition and separate possession.
2. Regular Civil Suit No. 51 of 2001 was filed by respondent nos. 1 to 3 claiming share in the suit property owned by one Uttam. Respondent no. 1 is the first wife of Uttam and respondent nos. 2 and 3 are children born out of the wedlock of respondent no. 1 and Uttam. Defendant no. 1 – Pushpabai who is respondent no. 4 herein, claimed to be second wife of Uttam and appellants claim to be children of Pushpabai and Uttam. The suit was decreed by the learned Joint Civil Judge Junior

Division, Shahada, on 31st August, 2010, thereby holding that there was a valid dissolution of marriage between respondent no. 1 – Mirabai and Uttam. Learned Trial Court disbelieved the case of the defendants regarding relinquishment of the rights by the respondent nos. 1 to 3 (plaintiffs) with respect to the suit property.

3. Thus, the Trial Court held that all four children of Uttam that is the present appellants as well as respondent nos. 2 and 3 were entitled to equal share in the suit property and thus, passed a decree for partition granting 1/4th share to each appellants and respondent nos. 2 and 3.
4. So far as defendant no. 1 (Pushpabai) is concerned who claims to be second wife of Uttam is not being given any share by the trial Court. Though, there is no specific finding recorded by the trial Court with respect to the respondent no. 4 – Pushpabai being legally wedded wife of Uttam. The first appellate court has recorded a finding that there was no proof of the respondent no. 4 being legally wedded wife of Uttam. Hence, she is not been given any share. Plaintiff no. 1 i.e. respondent no. 1 was legally wedded wife of Uttam, however, there was a finding recorded that there was dissolution of marriage of respondent no. 1 and Uttam. Hence, the respondent No. 1 will

also not get any share in the suit property. So far as the appellants and respondent nos. 2 and 3 are concerned, there is no dispute that all are the four children of Uttam and hence, the first appellate court has confirmed the decree granting 1/4th share to the plaintiff nos. 2 and 3 i.e. respondent nos. 2 and 3.

5. Learned counsel for the appellant submitted that there was a specific case made out by the present appellants that the plaintiffs had relinquished their share in the suit property. Since oral evidence produced on record supported the case of the appellants that respondent nos. 1 to 3 had relinquished their share in the suit property, Respondent nos. 1 to 3 were not entitled to claim any share in the suit property. There is no dispute that there was no valid registered document with respect to any relinquishment as pleaded by the appellants. Both the courts have specifically dealt with the contention with respect to relinquishment on the part of the plaintiffs.
6. Considering the admitted facts with respect to the plaintiff nos. 2 and 3 and the present appellants being children of Uttam, I do not find any fault with the reasonings given by both the courts, thereby, granting 1/4th share to respondent nos. 2 and 3 i.e. plaintiff nos. 2 and 3.

7. There is a finding of fact recorded in relation with respect to relationship of the appellants as well as respondent nos. 2 and 3 that they are children of Uttam. Since there is no valid ground made out with respect to denying any share to the respondent nos. 2 and 3, I do not find that there is any perversity and / or any illegality in the reasonings recorded by both the courts. Second Appeal do not involve any question of law and hence, the Second Appeal is dismissed.
8. In view of dismissal of Second Appeal, the Civil Application has become infructuous and hence, dismissed.

**[GAURI GODSE]
JUDGE**