

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 637 OF 2015

1. Sukhdeo s/o Paraji Raut
age 61 years, occ. Agril.
2. Chandrabhan s/o Paraji Raut
age 51 years, occ. Agril.,

Both r/o Kelwad, Tq. Rahata
Dist. Ahmednagar.

Appellants

Versus

1. Bhagubai Karbhari Gorane
(Deceased through LRs)
 - 1A Bagubai Karbhari Gorane
(Deceased through LRs)
Karbhari Bhikaji Gorane
(Deceased through LRs)
 - 1A-1 Lilabai Karbhari Gorane
age 60 years, occ. Agril
R/o neasr Dr. Shrikant Deshmukh
Maldad road, Sangamner
Dist. Ahmednagar.
2. Indubai Bhagat Khade
(Deceased through LRs)
 - 2-A Bhagat Rajba Khade
age 70 years, occ. Agril,
 - 2-B Balasaheb Bhagat Khade
age 48 years, occ. Agril.
 - 2-C Kailas Bhagat Khade
age 43 years, occ. Agril,

2-D Salubai Bhagat Khade
age 43 years, occ. Agril

Nos. 2-A to 2-D r/o Gogalgaon
Tq. Rahata, Dist. Ahmednagar.

2-E Manda Dattatraya Raut
age 42 years, occ. Household
r/o Nipani Wadgaon
Tq. Sangamner, Dist. Ahmednagar.

2-F Ranjana Eknath Kandalkar
age 40 years, occ. Household
r/o Talegaon, Tq. Sangamner
Dist. Ahmednagar.

2-G Tarabai Janardhan Sapte
age 37 years, occ. Household
r/o Wavi, Tq. Sinnar
Dist. Nashik.

Respondents

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age 37 years, occ. Household
r/o Wavi, Tq. Sinnar
Dist. Nashik.
3. Kalabai Abaji Gawade (Sonawane)

age 50 years, occ. Household
r/o Nipani Wadgaon
Tq Sangamner, Dist. Ahmednagar.

4. Zumbarbai Sonyabapu Dandvate
age 60 years, occ. Household
r/o Rahata, Tq Rahata
Dist. Ahmednagar.

Respondents

Mr. V. S. Bedre, Advocate for the appellants.

Mr. S. P. Chapalgaonkar, Advocate for respondents No. 1A and 2A.

CORAM : R. M. JOSHI, J.

RESERVED ON : 21st MARCH, 2023.

PRONOUNCED ON : 31st MARCH, 2023.

JUDGMENT :

1. Second Appeal No. 637/2015 is preferred by Sukhdeo and Chandrabhan, original plaintiffs in Regular Civil Suit No. 279/1990 filed by declaration of their ownership over the suit lands bearing Gat No. 310 and 311 situated at Kelwad Bk. whereas Second Appeal No. 638/2015 is filed by them being defendants in Regular Civil Suit No. 173/1991 filed by Bhagubai and Indubai for partition and possession of half share in the suit properties. Since Regular Civil Suit No. 279/1990 was dismissed and Regular Civil Suit No. 173/1991 was decreed by impugned judgment dated 13th February, 1995, Regular Civil Appeals No. 52/2005 and 144/2012 were filed

which also came to be dismissed by judgment dated 22nd April, 2015. Present Second Appeals are filed challenging the aforesaid judgment.

2. Brief facts as they are appearing from both the suits can be narrated as under :-

Bhagubai and Indubai filed suit bearing Regular Civil Suit No. 173/1991 for partition and separate possession claiming half share in the suit properties. They claim that Bhoja Raut was the common ancestor of plaintiffs and defendants. The genealogy shown in the plaint indicates that Bhoja had two sons namely Paraji and Biru. Paraji had two sons i.e. Sukhdeo and Chandrabhan and one daughter. Whereas Bira out of his marriage with Varubai had two daughters i.e. Bhagubai and Indubai. It is claimed that there was no partition of the suit properties and the properties being ancestral, Bhagubai and Indubai had right to seek partition and possession of the half share.

3. In the said suit, defendants filed written statement and denied the claim of plaintiffs that they are daughters of Biru. It is further claimed that Biru never married as he was suffering from

leprosy. It is also contended that by registered sale-deed dated 28th September, 1951, Biru had sold his half share to his brother Piraji.

4. In Regular Civil Suit No. 279/1990, Sukhdeo and Chandrabhan claimed declaration being absolute owners of the suit properties. According to them, their paternal uncle Biru had executed sale-deed in favour of their father Paraji on 28th September, 1951 and on the basis of the said document, they have acquired right, title and interest in the suit property.

5. Defendants Bhagubai and Indubai opposed the suit by filing written statement and reiterating their contentions in Regular Civil Suit No. 173/1991.

6. Learned Trial Court framed issues and called upon the plaintiffs i.e. Bhagubai and Indubai to prove that there is a joint Hindu family of plaintiffs and defendants. The burden was also placed upon them to show that they are daughters of Biru and that the suit properties are ancestral properties. There was a burden on Sukhdeo and Chandrabhan to prove that they have become absolute

owners of Gat No. 311 and that they are entitled for declaration as sought.

7. Bhagubai stepped into witness box and led oral evidence about she and Indubai being daughters of Biru begotten from wedlock with Varubai. Apart from the oral evidence, they examined (PW 2) Joseph, a clerk from Tahsil office who has proved the genuineness of the entry in the birth register showing Bhagubai as daughter of Biru. The genuineness of said entry in the birth register is not challenged by the other side. It is pertinent to note that the said entry is taken during the lifetime of Biru and hence by no stretch of imagination it can be said that a false entry is got prepared in order to substantiate the claim of Bhagubai to be the daughter of Biru. There is further support to this testimony from the testimony of (PW 3) Sakharam, a relative of the parties, who candidly deposed about the relationship between plaintiffs and defendants as well as Bhagubai and Indubai being daughters of Biru. As against this, Sukhdeo was unable to adduce any evidence in order to rebut the evidence of Bhagubai about she and her sister being daughters of Biru.

8. As regards ancestral properties, there is no dispute that the suit properties are ancestral properties devolved upon Paraji and Biru from their ancestor Bhoja. Thus, Bhagubai and Indubai being the legal heirs and daughters of Bira are entitled to have half share in the suit properties. This claim of Bhagubai and Indubai however, is resisted by Sukhdeo and Chandrabhan with the contention that Biru had executed sale-deed (Exhibit 42) on 28th September, 1951, whereby his half share in Gat No. 310 and 311 was sold to Paraji. Though the burden was on Sukhdeo to prove said contention, he failed to adduce any evidence. He was called upon by Bhagubai for cross-examination. As a matter of fact, no evidence is adduced by Sukhdeo to show that Biru had executed sale-deed. Pertinently, said sale-deed does not bear the signature or thumb impression of Biru. In this regard, it is contended by learned counsel for appellants that since Biru was suffering from leprosy he was unable to execute the document and accordingly, endorsement has been made by the Registrar while registering the document. In the regard, however, there is absolutely no evidence on record to show that Biru was suffering from leprosy and for that reason he was unable to execute the document. In order to substantiate the said claim, initially burden was on Sukhdeo to show that deceased Biru was suffering

from leprosy at any time or at relevant time. There is however no evidence led in this regard on the other hand, evidence of Sakharam shows that Biru never suffered leprosy. In the light of this fact, it is not proved that sale-deed (Exhibit 42) was even executed by Biru in order to transfer his half share in the suit properties in favour of his brother Paraji.

9. Perusal of pleadings and evidence on record clearly shows that the findings arrived at by the Trial Court which are confirmed by the First Appellate Court are in consonance with the material on record. This Court finds no perversity in the said findings in order to consider it to be a substantial question of law. In the result, second appeals being devoid of merit, stand dismissed.

10 Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb