

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

SECOND APPEAL NO.883 OF 2018

**BHASKAR DADA GAWARE AND OTHERS
VERSUS
ABASAHEB BHASKAR GAWARE AND OTHERS**

...

Advocate for Appellants: Mr. Chaitanya V. Dharurkar
Advocate for Respondent No.1 : Mr. R.L. Kute

CORAM : KISHORE. C. SANT, J.

DATE : 07th NOVEMBER, 2023

PER COURT :

1. Heard learned advocates for the respective parties.
2. This second appeal was admitted by order dated 27/01/2022. This Court considering the arguments, had framed following question of law:

"Whether in the facts and circumstances, by virtue of section 16(3) of the Hindu Marriage Act, 1955, Pandurang, Kamal, Mallika and Amrapali can claim a share in the suit properties which are held to be ancestral and joint family properties ? If yes, what is their share ?"

3. It was specifically observed that the said admission would depend upon the decision by the Larger Bench of the Hon'ble Apex Court about entitlement of illegitimate son / child, whether he is entitled to the share in ancestral property. This Court specifically recorded that, to the extent of other findings, this Court was not

inclined to interfere with the concurrent findings of fact recorded by both the Courts. Thus, this Court is confined only to the substantial question of law that is already formulated by this Court.

4. Today, the matter is circulated by learned advocate for respondent as by now the Hon'ble Apex Court has decided the very issue in **Civil Appeal No.2844/2011 (*Revanasiddappa and Another Vs. Mallikarjun and Others*)**. The Hon'ble Apex Court has clearly held that the illegitimate child is also entitled to a share in the ancestral properties. Paragraph 42 of the said judgment reads thus:

"42. When a Hindu dies after the commencement of the Amending Act of 2005, his interest in the property of a Joint Hindu family governed by Mitakshara law has to devolve by testamentary or intestate succession and not by survivorship, as stipulated in sub-Section (3) of Section 6. The interest of a Hindu Mitakshara coparcener, for the purpose of sub-Section (3) has to be ascertained on the basis that a notional partition has taken place immediately before his death. The share in the property that would have been allotted to the intestate on the basis of such a notional partition is governed by the General Rules of Succession specified in Section 8, HSA 1956. The distribution of the property among the Class-I heirs is governed by the Rules specified in Section 10. In the distribution inter alia the surviving sons, daughters and mother of the intestate take one share each and likewise the widow (and all the widows together if there was more than one) take one share. In the distribution of the property of the deceased who has died intestate, a child who is recognised as legitimate under sub-Section (1) of Section 6 of the HMA 1955 or under sub-Section (2) of Section 16 would be entitled to a share. Since this is the property that would fall to the share of the intestate after notional partition, it belongs to the intestate. Under Section 16(3), a child conferred with legitimacy is entitled

to the property of their parents only, and does not have any rights to or in the property of a person other than the parents. Hence, where the deceased has died intestate, the devolution of this property must be among the children - legitimate as well as those conferred with legitimacy by the legislature under Section 16(1) and 16(2) of the HMA 1955. Doing so would not offend or breach the restriction which is specified in sub-section (3) of Section 16."

5. Thus, now the position is settled and nothing remains to be decided in the present appeal. The substantial question of law is thus, answered accordingly in view of the judgment of the Hon'ble Apex Court in case of ***Revanasiddappa and Another*** (supra). The second appeal stands dismissed. Decree passed by the learned District Judge-1, Shrirampur, in Regular Civil Appeal No.31/2015, is hereby confirmed.

6. Pending civil Applications, if any, also stands disposed off in view of disposal of the appeal.

7. At this stage, learned advocate for appellants seeks continuation of interim relief granted earlier. Considering that the interim relief was running since 2018, the same shall continue for a period of four weeks from today.

(KISHORE. C. SANT, J.)