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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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SECOND APPEAL NO.466 OF 2011

Sushma T. Salunkhe

...Appellant

V/s.

Smt.Gandhari T. Salugade & Ors.

...Respondents

Mr.Satyajeet A. Rajeshirke for the Appellant.

Mrs.Archita Gharat with Mr.Prabhakar M.Jadhav for Respondent
Nos.1 to 3.

CORAM : RAJESH S. PATIL, J.

DATE : 11TH DECEMBER, 2023.

P.C. :-

1. This Second Appeal is filed by the original Plaintiff challenging the judgment and order dated 1 April 2011, passed by the District Judge, Satara.

2. The Appellant herein is the daughter of one Tukaram Savlaram Salugade, born out of the first marriage of `Tukaram' with Vimal, who is the mother of the present Appellant (original Plaintiff). The said `Tukaram' after the death of his first wife (Vimal), got married to lady with Gandhari (who is the original Defendant No.1). The said Gandhari had three children out of the wedlock with `Tukaram' viz. son Vijay and daughters Shubhangi and Manisha. The daughter Manisha expired on 6 April 1995. Therefore, her son Tushar

Phadatare has been joined as Defendant No.4 in the suit.

3. The Appellant (original Plaintiff) filed Regular Civil Suit No.150 of 2005 before Civil Judge (Junior Division), Satara against the Defendants, who are her step mother and step brother, step sister and son of step sister, seeking therein partition and separate possession of her share, as well as *mesne-profit* at the rate of Rs.1,000/- per month from the date of filing of the suit till its possession.

4. The said suit was opposed by the Defendants by filing their written statement, therein they contended that the Plaintiff would be entitled only to 1/20th share in the suit property.

5. After the evidence was recorded, Civil Judge (Junior Division), Satara by its judgment and order dated 1 February 2008, decreed the suit filed by the Plaintiff (present Appellant) and granted her 1/5th share, so also granted 1/5th share each to Defendant Nos.1 to 4.

6. Being aggrieved by the judgment and order passed by the Trial Court, the original Defendants preferred an Appeal being Regular Civil Appeal No.87 of 2008, challenging the judgment and decree of the Trial Court to the extent of calculation of share and also on the ground of retrospective effect of the Hindu Marriage Act, 2005. The District Court by its judgment and decree dated 1 April 2011

allowed the Appeal, filed by the original Defendants and substituted the decree of the Trial Court and granting the Plaintiffs 1/20th share by holding that the Amendment Act, 2005 as prospective, whereas granting Defendant Nos.1 to 3 share of 6/20th.

7. The original Plaintiff (present Appellant) challenged the judgment and decree of the District Court by filing Second Appeal in this Court being Second Appeal No.466 of 2011. The said Second Appeal along with other Second Appeals were referred to the Full Bench of this Court thereby challenge being effected of the Amendment Act, 2005.

8. The Full Bench of this Court by their judgment and order dated 14 August 2014, answered the question, that Section 6 of the Hindu Succession Act, as amended by Amendment Act, 2005 is retrospective in operation, as explained in the judgment as to clauses (b) and (c) and other part of sub-section (1) as well as sub-section (2) as amended Section 6.

9. In view of the judgment of the Full Bench, this Hon'ble Court by their order dated 23 June 2015 allowed the Appeal and set aside the judgment and decree passed by the District Court and restored the judgment and decree of Trial Court.

10. The original Defendants thereafter challenged the decree passed in Second Appeal No.466 of 2011, before the Supreme

Court.

11. By its order dated 13 February 2017, Supreme Court allowed the Appeal filed by the original Defendants in the light of the judgment passed in the case of **Prakash & Ors. vs. Phulvati & Ors.**, reported in **2016 (2) SCC 36** and thereby set aside the judgment and decree of this Court, and remanded the matter back to this Court for fresh decision in accordance with law.

12. In the meantime, this Court by a detail order dated 23 February 2018, admitted the Second Appeal, as the Appellant brought to the notice of this Court the recent judgment of the Supreme Court in case of **Danamma @ Suman Surpur & Anr. vs. Amar & Ors.**

13. Shortly thereafter, the Supreme Court while answering the reference in view of conflict in the cases of **Prakash & Ors.**, **Danamma @ Suman Surpur & Anr. vs. Amar & Ors.**, answered the reference in **Vineeta Sharma vs. Rakesh Sharma & Ors.**, reported in **(2020) 9 SCC 1**.

14. In the present proceedings, this Second Appeal has been admitted on substantial question of law as per the order dated 23 February 2008 :-

“9] Accordingly, this second appeal is formally admitted on the following substantial questions of law : -

(a) Whether the appellants daughters were entitled to the benefit of the provisions in Section 6 (as amended by Amendment Act of 2005) of the Hindu Succession Act, 1956 ?

(b) Whether the view taken by the first appeal court is contrary to the decision of the Hon'ble Supreme Court in Danamma Surpur (supra) ?

(c) Whether the Appellate Court completely ignored that as this was a case where there was no partition or testamentary disposition before 20th December, 2004, the Appellant / Plaintiff was entitled to 1/5th share in the Joint Family property on par with her brother ?

15. In case of **Vineeta Sharma** (supra), the Supreme Court has held in paragraph 137, which reads as under :

“137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

137.4. The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act,

1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

(emphasis supplied.)

16. So also in paragraph 139, which reads as under :

“In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in ***Prakash v. Phulavati*** and ***Mangammal v. T.B. Raju & Ors.*** The opinion expressed in ***Danamma @Suman Surpur & Anr. v. Amar*** is partly overruled to the extent it is 121contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits.”
(emphasis supplied.)

17. In view of law as now settled by the Supreme Court, there is no doubt in my mind that the Appellant (original Plaintiff), will be

covered by the issue under reference as answered in paragraph 137.2 and 137.3.

18. Hence the Second Appeal deserves to be allowed. The question of law as framed by this Court on 23 February 2018 are answered in favour of the Appellant.

19. Hence the Appellant – daughter is entitled to the benefit of the provisions of Section 6 as amended by the Amendment Act, 2005 of the Hindu Succession Act, 1956.

20. The view taken by the First Appellate Court is contrary to the decision of the Supreme Court.

21. The Appellate Court completely ignored that this was the case, there was no partition to testamentary disposition before 20 December 2004, the Appellant / Plaintiff was entitled to 1/5 share in the joint family property at par with her brother.

22. Hence the Second Appeal is allowed. There shall be no order as to costs.

23. All parties to act on the authenticated copy of this order.

(RAJESH S. PATIL, J.)