

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.484 OF 2021
WITH
INTERIM APPLICATION NO.2428 OF 2019**

Shri. Kallappa Somninga Chamkeri ...Appellants
& Ors.

V/s.

Ajit Somninga Chamkeri & Ors. ...Respondents

Mr. Manoj A. Patil for Appellants.

Mr. Vijay Killedar for Respondent Nos. 1 and 2.

CORAM: MADHAV J. JAMDAR, J.
DATE: 19th JANUARY, 2023

P.C.:

1. Heard Mr. Patil, learned Counsel appearing for the Appellants and Mr. Killedar, learned Counsel appearing for Respondent Nos. 1 and 2.

2. Mr. Patil submitted that the following substantial question of law is involved in this Second Appeal :

“Whether the Suit filed by the Respondents bearing Regular Civil Suit No. 12 of 2012 is bad for non joinder of necessary parties?

3. Mr. Patil submitted that the suit for partition is filed and inter-alia partition is sought with respect to house No. 396. He submitted that admittedly the said house was belonging to Kallappa. The Plaintiff No.2 is widow of Somning i.e. son of Kallappa and the Plaintiff No.1 Ajit is grandson of Kallappa. Admittedly, the said house bearing House No. 396 is the property of Kallappa. Kallappa was having two sons namely Somning and Sadashiv and three daughters i.e. Bayakka, Nilavati and Surekha. The Plaintiffs are the heirs of said Somning i.e. Defendant No.1 and Sadashiv has been impleaded as Defendant No. 3 to the suit. However, admittedly Bayakka, Nilavati and Surekha i.e. daughters of Kallappa are not impleaded as parties to the suit.

4. The learned Trial Court while holding that the suit is not bad for non joinder of necessary parties have observed that as per Sections 6 and 8 of Hindu Succession Act, 1956, sisters do not come within the ambit of Class-I heirs and therefore held that the suit is not bad for non joinder of necessary parties. However, the learned Trial Court overlooked that one of the suit property was belonging to Kallappa and said Bayakka, Nilavati and Surekha are the daughters of said Kallappa and therefore they are Class-I heirs of said Kallappa as per provisions of Hindu Succession Act. Now in view of amendment of Section 6,

daughter of a coparcener shall become a coparcener in her own right in the same manner as son. Thus, it is clear that said daughters of Kallappa are necessary parties to the suit and therefore, the suit is bad for non joinder of necessary parties.

5. Mr. Patil and Mr. Killedar, learned Advocates appearing for the parties fairly points out that said Bayakka, Nilavati and Surekha i.e. daughters of Kallappa have filed Regular Civil Suit No. 175 of 2013 seeking partition regarding the same suit properties, which are subject matter of Regular Civil Suit No. 12 of 2012.

6. In view of this, both the learned Advocates submit that the said suit being Regular Civil Suit No. 12 of 2012 filed is bad for non joinder of necessary parties. Mr. Killedar states that he has instructions to amend the plaint filed in Regular Civil Suit No. 12 of 2012.

7. In view of above position, the judgment and decree dated 30th March 2013 passed by learned Civil Judge, Junior Division, Jath, District Sangli bearing Regular Civil Suit No. 12 of 2012 as well as judgment and decree dated 17th July 2019 passed by learned District Judge-1, Sangli in Regular Civil Appeal No. 242 of 2013 are quashed and set aside.

8. The Regular Civil Suit No. 12 of 2012 is restored to the file of Civil Judge, Junior Division, Jath, District Sangli.

9. The Plaintiffs i.e. Respondents to take appropriate steps and all the contentions of all the parties are kept open.

10. As the partition suit filed by daughters of Kallappa are already pending bearing Regular Civil Suit No.175 of 2013, it is open to the present parties to apply for clubbing of said Regular Civil Suit No. 12 of 2012 with that suit and for joint trial of both the suits.

11. The Second Appeal is disposed of in above terms with no order as to costs.

12. As the Second Appeal is disposed of, nothing survives in the Interim Application and same is also disposed of.

13. As the suit filed by the Respondents i.e. Plaintiffs is of the year 1999, the learned Trial Court is requested to expeditiously dispose of the suit.

(MADHAV J. JAMDAR, J.)