

VRJ

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

SECOND APPEAL NO.379 OF 2023

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Gangubai Chandar Aachari ... Appellant
V/s.
Sumanbai Madhukar Kavre & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.3568 OF 2023
IN
SECOND APPEAL NO.379 OF 2023**

Gangubai Chandar Aachari ... Applicant
V/s.
Sumanbai Madhukar Kavre & Ors. ... Respondents

Mr. Vikram Pai for the appellant.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 21, 2023

P.C.:

1. The appellant original defendant is challenging judgment and decree passed by the Courts below granting half share in the suit property to the plaintiffs and defendant.
2. The respondents original plaintiffs filed Regular Civil Suit No.65 of 2014 seeking declaration that plaintiffs have undivided share in the suit property and for partition and separate possession

of the plaintiffs' share. Moreover, injunction restraining defendant from disturbing plaintiffs' possession over the suit property and from alienating suit property was also sought.

3. According to the plaintiffs, plaintiff Nos.2 to 7's grandfather Shivram was the owner of suit property who died on 13th May 1966. The plaintiff Nos.2 to 7's father Madhukar died on 1st August 2006. Plaintiff No.1 is widow of Madhukar, while plaintiff Nos.2 to 7 are his sons and daughters. While bringing names of legal representatives on record as regards suit property, names of defendants were entered in revenue record and, therefore, plaintiffs filed a suit seeking decree of partition of the suit property.

4. The defendant contested the suit by filing written statement. According to the defendant, Madhukar, husband of plaintiff No.1 and father of plaintiff Nos.2 to 7 are not legal representatives of Shivram. According to the defendant, Shivram was not biological father of deceased Madhukar and he was son of Thakubai not born in the wedlock with Shivram and Thakubai.

5. The Trial Court framed necessary issues casting burden on the plaintiffs to prove nature of suit property as ancestral and further issue casting burden on the plaintiffs to prove that they have share in the suit property.

6. The plaintiffs in support of their case that Madhukar was the son of Thakubai and Shivram produced on record School Leaving Certificate dated 26th March 1964 issued by school Headmaster. The certificate indicates name of Madhukar as "Madhu Shivram

Kavre”. Even in the written statement filed by the defendant, defendant specifically admitted that the name of Madhukar Shivram Kavre was entered by mistake by Thakubai at the time of admission of Madhukar in school. The defendant in her cross-examination initially admitted that Shivram had two children but thereafter defendant’s advocate filed an application before the Trial Court for re-examination of the defendant in which she stated that she was not knowing meaning of word “son” and she stated that defendant is the only child born to Thakubai. Therefore, the Courts below relied on admission of the defendant that Shivram had two children.

7. Apart from aforesaid two circumstances, the Courts below relied on mutation entry dated 3rd April 1966 certifying Madhukar’s name against the suit property which was, thereafter, deleted. The caste certificate issued to Madhukar also indicates name of Shivram as father of Madhukar. In the ration card name of Madhukar was shown as Madhukar Shivram Kavre.

8. Based on all documents referred above, the Courts below recorded a concurrent finding that Madhukar was son of Shivram and Thakubai Kavre. Since the said finding is based on admissible and relevant evidence, no case for disturbing such finding of fact is made out by the appellant.

9. Moreover, there is no serious dispute that suit property is ancestral property and Shivram was the owner. Therefore, plaintiffs being Class-I heirs of Madhukar, both the Courts below have rightly decreed the suit for partition. No case for interference

is made out. No substantial question of law is involved.

10. The second appeal stands dismissed. No costs.

11. In view of dismissal of the second appeal, the interim application does not survive. The same stands disposed of as infructuous.

12. At the request of learned advocate for the appellant execution of decree is stayed for period of four weeks from today.

(AMIT BORKAR, J.)