

Pallavi

Digitally signed
by PALLAVI
MAHENDRA
WARGAONKAR
Date:
2023.02.04
17:01:15
+0530

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

**SECOND APPEAL NO.388 OF 2020
WITH
INTERIM APPLICATION NO.930 OF 2021**

Smt. Pavitrabai Dagadu Sonawane
(Since deceased through LR)

...Appellant/Applicant

Versus

Shrimati Shushila Laximan Sonawane (Dhor) & Ors. ...Respondents

Mr. Rahul S. Kate, for the Appellant/Applicant.

Mr. Shekhar Jagtap i/b. J. Shekhar & Co., for the Respondent Nos.1 to 6.

CORAM : MADHAV J. JAMDAR, J.

DATE : 1st FEBRUARY 2023

P.C. :

1. Heard Mr. Rahul Kate, learned counsel appearing for the Appellant and Mr. Shekhar Jagtap, learned counsel appearing for the Respondent Nos.1 to 6. Mr. Rahul Kate, learned counsel states that although Respondent Nos.7 to 11 are served, none appears for them.

2. The Appellant has challenged by the present Second Appeal the Judgment and Decree dated 16th January 2019 passed by the learned District Judge – 2, Baramati, District - Pune in Regular Civil Appeal No.214 of 2012.

Pallavi

3. The following substantial question of law is raised in this Appeal:-

Whether the learned First Appellate Court is right in holding that the legal representative Manik Prakash Shinde has no *locus standi* to continue the said Regular Civil Appeal No.214 of 2012?

4. Mr. Rahul Kate, learned counsel of the Appellant submitted that the original Appellant - Pavitrabai D. Sonawane passed away on 8th March 2014. The deceased Appellant had bequeathed the suit properties to her brother's son viz. Manik Shinde i.e. present Appellant by her last Registered Will dated 2nd December 2010. Therefore, application bearing Exh.16 has been filed in said Regular Civil Appeal No.214 of 2012 and the said application was allowed by the learned Ad-hoc District Judge-2, Baramati by passing order below Exh.16 in Regular Civil Suit No.214 of 2012. Accordingly, the present Appellant i.e. Manik Shinde is substituted as the legal representative of original Appellant viz. Pavitrabai Dagadu Sonawane. However, at the final hearing of the said Regular Civil Appeal No.214 of 2012, the learned First Appellate Court dismissed the Appeal on the ground

Pallavi

that Manik Shinde does not have *locus standi* to continue the said Appeal.

5. The learned First Appellate Court has relied on provision of section 15 of the Hindu Succession Act, 1956 and held that share of Pavitrabai did not devolve upon Manik Shinde and therefore, he does not have *locus standi* to continue the said Appeal. Mr. Rahul Kate, learned counsel submitted that section 15 of the Hindu Succession Act, 1956 has no application as the deceased has left last Will which is registered on 2nd December 2010.

6. On the other hand, it is the contention of Mr. Shekhar Jagtap, learned counsel of the Respondent Nos.1 to 6 that in view of section 15 of the Hindu Succession Act, 1956, the property does not devolve upon said Manik Shinde. Therefore, he cannot be the legal representative of deceased Pavitrabai D. Sonawane.

7. The factual position on record shows that the original Appellant - Pavitrabai D. Sonawane filed said Appeal on 22nd October 2012 bearing Regular Civil Appeal No.214 of 2012 challenging the Judgment and Decree dated 11th September 2012 passed by the learned Civil Judge, Junior Division, Baramati in Regular Civil Suit No.205 of 2003. During the pendency of the said Appeal, the original

Pallavi

Appellant - Pavitrabai passed away on 8th March 2014 and therefore, Exh.16 application was filed in said Appeal. In the said Exh.16 application, prayer is sought to bring on record name of the present Appellant - Manik P. Shinde as the legal representative of deceased Appellant - Pavitrabai D. Sonawane. In the said application, reliance is placed on Registered Will dated 2nd December 2010 executed by said Pavitrabai by which suit properties were bequeathed in favour of the Appellant. The said application was opposed by the Respondent Nos.1 to 6 by filing say. The learned First Appellate Court by order dated 14th June 2016 passed below Exh.16 in Regular Civil Appeal No.214 of 2012 allowed the said application by considering the rival contentions and by giving reasons. Pursuant to the said order dated 14th June 2016, name of said Manik Prakash Shinde was brought on record as legal representative of deceased Appellant – Pavitrabai in said Regular Civil Appeal No.214 of 2012. It is admitted position that the said order dated 14th June 2016 passed below Exh.16 in Regular Civil Suit No.214 of 2010 is not challenged by the present Respondents.

8. It is settled legal position that the principles of *res judicata* are applicable to the different stages of the same proceeding. The

Supreme Court, in the matter between **Erach Boman Khavar Vs. Tukaram Shridhar Bhat and Another**¹, has held thus:

“ It is well settled in law that principle of res judicata is applicable between the two stages of the same litigation but the question or issue involved must have been decided at earlier stage of the same litigation.”

9. Thus, once after hearing both the parties, the learned First Appellate Court has allowed the application bearing Exh.16 by passing reasoned order and brought on record the present Appellant - Manik Shinde as legal representative of the original Appellant - Pavitrabai, there is no question of again going into the said aspect and dismissing the Appeal only on the ground that the said Manik Shinde does not have *locus standi* to continue the Appeal.

10. Apart from the above, the impugned order of the learned First Appellate Court is contrary to the provisions of law. The learned First Appellate Court has relied on section 15 of the Hindu Succession Act, 1956. Section 15 of the Hindu Succession Act is regarding general rules of succession in the case of female Hindus. Sub-section (1) of section 15 provides that property of a female Hindu dying intestate shall devolve upon according to the rules set out in section 16 on

1 (2013) 15 SCC 655

Pallavi

various heirs as set out in said section. However, it is significant to note that section 15 is applicable if female Hindu dies intestate. In the present case, admittedly, the deceased Pavitrabai passed away by leaving behind registered Will dated 2nd December 2010. Therefore, section 15 has no application to the present case.

11. For the above reasons, the impugned Judgment and Decree dated 16th January 2019 passed by the learned District Judge-2, Baramati, Pune in Regular Civil Appeal No.214 of 2012 dismissing the said Appeal only on the ground that Manik Shinde does not have *locus standi* in the said Appeal is quashed and set aside. Said Regular Civil Appeal No.214 of 2012 is restored to the file of the learned District Judge, Baramati, District Pune. Both the Appellant and the Respondents to attend concerned Court of learned District Judge, Baramati, District Pune on 1st March 2023. The learned concerned District Judge to take steps in accordance with law to serve the Respondent Nos.7 to 11 of the notice of Regular Civil Appeal No.214 of 2012, if they fail to remain present before the Court on 1st March 2023.

12. The learned concerned District Judge, Baramati, District Pune to dispose of the Appeal expeditiously as the Appeal is of the year

Pallavi

2012 and in any case, on or before 31st March 2023.

13. Second Appeal is disposed of in above terms with no order as to costs. In view of the disposal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]