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

**SECOND APPEAL NO.14 OF 2022
WITH
CIVIL APPLICATION NO.1180 OF 2019
IN
SECOND APPEAL NO.14 OF 2022**

Anusaya Kashinath Ushir and Ors. ...Appellants
Versus
Bhausahab Karbhari Khandode and Ors. ...Respondents

- Mr. Vikram N. Walawalkar a/w Mr. Amey C. Sawant and Mr. Virendrasinh V. Tapkir i/b. Mr. Suresh M. Sabrad, for the Appellants/Applicants.
- Ms. Pranita P. Hingmire for Respondent Nos.1 to 3.
- Mr. Drupad Patil a/w Mr. Ankur Kalal i/b. M/s. Markand Gandhi & Co., for Respondent No.10.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 22nd FEBRUARY 2023**

P.C. :

1. Heard Mr. Walawalkar, learned counsel appearing for the Appellants, Mr. Drupad Patil, learned counsel appearing for the Respondent No.10 and Ms. Pranita Hingmire, learned counsel for Respondent Nos.1 to 3.
2. Learned Single Judge on 22nd April 2022, passed the following order:-

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“1. The learned counsel Mr. Sabrad is perfectly justified in submitting that in the wake of the latest authoritative pronouncement of the Hon’ble Supreme Court in case of conferment of coparcenary status upon the daughters under the Indian Succession Act, the determination of the shares of the plaintiffs and defendant No. 4 is incorrect.

2. Instead of keeping the appeal pending, it would be advisable that the appeal is disposed off at the stage of admission itself in the light of the decision in the case of Vineeta Sharma Vs. Rakesh Sharma & Ors. [(2020) 9 SCC 1]. Respondent Nos.1 to 3 are represented, but in absence of other coparceners, the matter is required to be adjourned. Mr. Patil represents respondent No.10, who is the subsequent purchaser and he may not have say in the appeal.

3. List the appeal on 27/06/2022.

4. The learned counsel for the appellants shall intimate the respondents about the next date of hearing.”

3. This Second Appeal was heard on 6th February 2023. In view of the law laid down by the Supreme Court in the decision of Vineeta Sharma Vs. Rakesh Sharma & Ors.¹, it is clear that the shares as determined by both the learned Trial Court and the learned First Appellate Court are required to be modified. Therefore, following

1. (2020) 9 SCC 1

substantial question of law is involved in this Second Appeal:-

“Whether the shares allotted by the learned Trial Court as confirmed by the learned First Appellate Court are proper in the light of the decision in the case of ***Vineeta Sharma (supra)***?”

4. It is admitted position that the shares as determined by the learned Trial Court and as confirmed by the learned First Appellate Court are not in accordance with the law laid down in the case of ***Vineeta Sharma (supra)*** and therefore, it was agreed by all the learned counsel who were appearing for contesting parties that the same requires modification.

5. The learned counsel appearing for the contesting parties i.e. Appellant, Respondent Nos.1 to 3 and Respondent No.10 have submitted the Minutes of Order to modify the shares in accordance with the law laid down in ***Vineeta Sharma (supra)***. The said “Minutes of Order” are taken on record and marked ‘X’ for identification. The said minutes read as under:-

“Minutes of Order

1. After due service of notice to all parties in the present Second Appeal, the parties present before this Court have no objection if the present Second Appeal is disposed of in

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terms of these Minutes of Order. The Respondent Nos. 4 to 9, though served in the above Second Appeal have chosen not to appear, the Respondent No. 11 is deleted as her legal heirs viz.Appellant Nos.5 to 7 and Respondent Nos.1 to 3 are already on record and whereas the Respondent NO.12-B.P.C.Ltd., is only formal party.

2. The Second Appeal is filed on 15.07.2019 and the same is pending admission. In the meantime the Hon'ble Supreme Court has laid down law in Vineeta Sharma V/s. Rakesh Sharma & Ors. reported in *(2020) 9 SCC 1*, whereby it is held that the daughters are also entitled for equal shares. In view of the aforesaid Judgment of this Hon'ble Court vide its Order dated 22.04.2022, directed that the above Second Appeal is to be disposed of finally at the stage of admission.
3. In the light of the aforesaid judgment of the Hon'ble Supreme Court, the judgment and decree dated 8.8.2016 passed by Ld. Civil Judge Senior Division, Niphad in Special Civil Suit No. 155 of 2009, confirmed by Ld. District Judge-1, Nashik vide Judgment and Order dated 28.3.2019 in Civil Appeal No. 39 of 2017, is modified by consent of parties. The parties are referred by their original nomenclature in the suit. The said Decree is modified as under;
 - a) Special Civil Suit No. 155 of 2009 is partly decreed.

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- b) It is hereby declared that Plaintiffs and Defendant Nos. 1 to 4 shall have 1/12th share each and Defendant Nos. 5 to 8 shall have 1/48th share each in suit properties mentioned in Para Nos. 1(A) and 1(B) (1) and 1(B) (4).
 - c) Partition of Agricultural lands mentioned in para Nos. 1(A) of the plaint shall be effected by Collector as per Section 54 of Code of Civil Procedure and as per provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.
 - d) Partition of House properties mentioned in para Nos. 1(B) (1) and 1(B) (4) of the Plaint be effected by appointing commissioner. Preliminary decree be drawn.
 - e) Prayer for mesne profits is rejected.
 - f) It is hereby declared that Will dated 20.6.2000 made by Karbhari in favour of Defendant No. 9 is not binding on Plaintiffs.
 - g) Prayer for declaration that Sale Deed dated 15.7.2000 made by Karbhari in favour of Defendant No. 10 is not binding on Plaintiffs, is rejected and the said Sale Deed is declared as legal, valid, subsisting and binding on Plaintiffs and Defendants.
 - h) Prayer for perpetual injunction is rejected.
 - i) Parties to bear their own cost.
4. In view of the aforesaid, the above Second Appeal stands disposed of.

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5. No order as to costs.”

6. Second Appeal is disposed of in terms of minutes of order with no order as to costs.

7. In view of disposal of Second Appeal, nothing survives in the Civil Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]