

Sonali

SONALI
MILIND
PATIL
Digitally
signed by
SONALI
MILIND
PATIL
Date:
2023.01.17
09:46:23
+0530

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

**SECOND APPEAL NO.1 OF 2019
WITH
CIVIL APPLICATION NO. 1 OF 2019**

Shri. Gajanan Narayan Mhatre ...Appellant
Versus
Shri. Harischandra @ Haribhau Soma Thakur
& Ors. ...Respondents

Mr. Himanshu Takke, i/b. Mr. Akshay Pawar, for the Appellant.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 16th JANUARY 2023**

P.C. :

1. Heard Mr. Takke, learned counsel appearing for the Appellant.
2. He submits that the following substantial question of law is involved in this Second Appeal.

i. Whether the finding of the learned Trial Court and the learned First Appellate Court that Janaki i.e. grandmother of Respondent Nos. 1 to 3 was the legally wedded wife of deceased Narayan Mhatre is recorded in accordance with the evidence on record?

Sonali

3. He submitted that the learned Trial Court and the learned First Appellate Court have extensively relied on the Mutation Entry No.3617. However, the marriage cannot be held to be proved on the basis of such mutation entry and therefore, he states that finding of fact recorded by the learned Courts is not legal and therefore, the impugned Judgments and Decrees are required to be quashed and set aside.

4. The factual position on record shows that it is the claim of the original Plaintiff i.e. Harischandra that Narayan initially married to Janaki and Savitribai is the daughter of Narayan and Janaki. Plaintiff i.e., Harischandra is son of Savitribai. After the death of Janaki, Narayan remarried. Somubai is the second wife of Narayan and Gajanan- Defendant No.1 is the son of Narayan and Somubai.

5. The only dispute raised by the present Appellant before the learned First Appellate Court is whether the Janaki is legally wedded wife of deceased Narayan. The learned Trial Court as well the learned First Appellate have relied on the oral evidence of P.W.2-Pandurang Patil. He has stated that Janaki was the first wife of Narayan Mhatre. He has further stated that

Sonali

Janaki died in the year 1945. The house of the P.W.2 is adjacent to the house of Narayan Mhatre. Thus, there is no substance in the contention of Mr. Takke that only on the basis of said Mutation Entry No.3617, the learned Trial Court and the learned First Appellate Court have recorded a finding that Janaki was legally wedded wife of deceased Narayan Mhatre.

6. The learned Trial Court and the learned First Appellate Court have in addition to the other evidence on record taken into consideration Mutation Entry No.3617 by which the name of Janaki was recorded as wife of Narayan. There is ample evidence on record to show that deceased Janaki is legally wedded wife of deceased Narayan. Therefore, there is no substance in the substantial question of law raised by the Appellant.

7. The Second Appeal is dismissed with no order as to costs.

8. In view of the dismissal of the Second Appeal, nothing survives in the Civil Application(for stay) and the same is also disposed of.

[MADHAV J. JAMDAR, J.]