

Dusane

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

**SECOND APPEAL (ST) NO.25704 OF 2022
WITH
INTERIM APPLICATION NO.20264 OF 2022
WITH
INTERIM APPLICATION NO.20265 OF 2022**

Shri. Anant Daji Borate ...Appellant/Applicant

V/s.

Shri. Dattaram Dhondu Mali ...Respondents
(deceased) thru' LRs Smt. Nira
Dattaram Mali & Ors.

Mr. Harshad Sathe for the Applicant.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 17th MARCH 2023**

P.C.:

- 1.** Heard Mr. Sathe, learned Counsel appearing for the Applicant.
- 2.** The suit was filed by the Respondents seeking partition and separate possession.
- 3.** Both the Courts have concurrently held that the suit property is ancestral property and the Plaintiff has half share in the property.

4. Mr. Sathe, the learned Counsel admits the same, however his only contention is that as far as half share of Defendant is concerned, he has got half share and his wife has got half share and that his wife has not been impleaded as party to the suit.

5. It is admitted position that the wife has filed another suit claiming her rights.

6. Mr. Sathe relied on judgment of this Court in the case of **Savitribai w/o Gunwant Waghmare & Anr. v. Deorao s/o Amrutrao Waghmare and Anr.**¹ and contended that the suit is required to be dismissed on the ground of non joinder of necessary parties. He also relied on the judgment of Hon'ble Supreme Court in the case of **Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Anr.**² However, the facts in both the judgments are totally different.

7. In the present case, share which has been allotted to the Plaintiff is half share, which Mr. Sathe, learned counsel appearing for the Applicant admits and he does not challenge the same. It is his only contention that as far as other half share is concerned which has been allotted to him, he has got 50% share and his wife has 50% share and decree is passed without impleading her as party. However, the present Appellant i.e. the Defendant is the party to the suit since inception. The

¹ 2011 (3) Mh. L.J. 794

² AIR 1965 SC 271

Defendants' wife is admittedly staying with him and no application was filed in the present suit for impleading her as party. Apart from that the wife has filed separate suit regarding her rights. In any case, it is not the case of the Appellant that his wife has got 50% share in the share which has been allotted to the Respondent.

8. Therefore, there is no substance in the Second Appeal. The Second Appeal is dismissed, however with no order as to costs.

9. In view of dismissal of the Second Appeal, nothing survives in the Interim Applications and the same are also dismissed.

(MADHAV J. JAMDAR, J.)