

AGK

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

**SECOND APPEAL NO.145 OF 2021
WITH
CIVIL APPLICATION NO.1594 OF 2018
AND
INTERIM APPLICATION NO.1095 OF 2019**

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Valubai Alias Sunita Maruti Mhasvekar ... Appellant

V/s.

Keraba Ganapati Sorate & Ors. ... Respondents

Mr. Sandeep S. Kkoregave for the appellant/applicant.

Mr. Rakesh S. Patil for respondent Nos.1 to 6.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 7, 2023

P.C.:

1. Following substantial question of law arises in this second appeal.

“Whether the Appellate Court was justified in modifying the decree reducing share of appellant No.1 from half to 1/70 relying on the judgment in the case of **Prakash & Ors. v. Phulavati & Ors.** reported in 2016 (1) Mh.L.J.1 (SC).”

2. After framing substantial question of law, parties are heard on the point of said question of law. On hearing both the parties, I am satisfied that the Second Appeal can be disposed of at the stage of admission as the issue involved is no longer *res integra* in view of the judgment in the case of **Vineeta Shama v. Rakesh**

Sharma & Ors. reported in (2020) 9 SCC 1.

3. Facts giving rise to the filing of the second appeal are: that properties described in paragraphs 1A and 1B of Regular Civil Suit No.65 of 2006 are the suit properties. According to the plaintiff, plaintiff and defendant Nos.1 to 5 and 7 to 9 are sons and daughters of Ganapati Gopala Sorate. Said properties are ancestral properties of the parties to the suit. The plaintiff, therefore, sought partition and separate possession of the suit properties.

4. Defendant Nos.1 to 6 contested the suit by contending that they have developed properties to their detriment and the partition was effected in the year 1990. According to the defendants on 2 November 2004 plaintiff and defendant Nos.7 to 9 relinquished their shares and right in the suit properties in favour of defendant Nos.1 to 5. Defendant Nos.1 to 5 are cultivating the suit properties.

5. The Trial Court framed necessary issues including the issue on nature of the suit properties being ancestral properties by placing burden on the plaintiff and relation to plea of relinquishment and previous partition burden is placed on the defendants. The Trial Court based on the material on record held that the defendants failed to prove that plaintiff and defendant Nos.7 to 9 relinquished their shares in favour of defendant Nos.1 to 5. The Trial Court recorded a finding that the defendants failed to prove previous partition of the suit properties. The Trial Court recorded a finding that the suit properties are ancestral properties. The Trial Court, therefore, decreed the suit holding that the

plaintiff along with defendant Nos.1 to 9 are entitled to 1/10th share each.

6. The Appellate Court relying on the judgment in **Prakash & Ors** (supra) held that the plaintiff and defendant Nos.7 to 9 are entitled to get share to the extent of 1/70th each and defendant Nos.1 to 6 will get 11/70th share each.

7. After delivery of judgment of the Appellate Court, the Apex Court in **Vineeta Sharma** (supra) held that the daughters are entitled to claim equal share along with son irrespective of the fact that the daughter was married before or after the amendment to the Hindu Succession (Amendment) Act, 2005. In view of the judgment of Three-Judge Bench of in **Vineeta Sharma** (supra) the decree passed by the Appellate Court cannot be sustained. Hence, following order:

- a) The judgment dated 1 July 2017 passed by District Judge-5, Kolhapur in Regular Civil Appeal No.185 of 2010 is quashed and set aside;
- b) The judgment and decree passed by the 8th Joint Civil Judge Junior Division, Gargoli in Regular Civil Suit No.65 of 2006 is restored to file.

8. The second appeal stands disposed of in above terms. No costs.

9. In view of disposal of the second appeal, all pending interim applications stand disposed of as infructuous.

(AMIT BORKAR, J.)