

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****Second Appeal No.73 of 2023**

PRAKASH KAWDUJI AGLAWE AND OTHERS

VS

SAU. PUSHPABAI VILASJI MALEWAR

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Bhutada, Advocate for the Appellants

CORAM : ANIL S. KILOR, J.

DATED : 31.01.2023

1. Heard.

2. In the present appeal, the judgment and decree dated 10.10.2022 passed by *Ad hoc* District Judge-2, Nagpur in Regular Civil Appeal No.327 of 2019, confirming the judgment and decree dated 30.10.2018 passed by Civil Judge Junior Division, Kalmeshwar in Regular Civil Suit No.18 of 2013, partly allowing the suit for declaration, partition, separate possession and temporary injunction, is under challenge.

3. The appellants are the original defendants and the respondent is the original plaintiff, who filed suit for declaration, partition, separate possession and permanent injunction. It is the case of the respondent/plaintiff that her father Kawaduji had three

sisters Tulsabai, Jijabai and Sitabai. After the death of Tulsabai her legal heirs, Jijabai and Sitabai had executed relinquishment deed in favour of their brothers i.e. deceased Kawaduji, Tukaram and Mahadeo on 14.05.2005. It is stated that after the partition, the suit property bearing Survey No.204 admeasuring 1 Hectare 63 R was allotted to Kawaduji.

4. It is further stated that after the death of Kawaduji, names of the plaintiff and the defendants mutated in the records of rights of the suit property and as such, the plaintiff and the defendants became owners of the suit property.

5. The plaintiff further claimed share in the suit property No.235 on the ground that it was purchased by Kawaduji on 17.04.1998 and as the share was refused by the defendants, the suit was filed.

6. The learned trial Court decreed the suit partly by granting $1/4^{\text{th}}$ share each to the plaintiff and the defendants in the suit property bearing Survey No.204/3, admeasuring 1 Hectare and 63 R and Survey No.235, admeasuring 1 Hectare and 04 R situated at village Gondkhairi, Taluka : Kalmeshwar, District : Nagpur.

7. The defendants filed their written statement resisting the suit on the ground that the plaintiff has not made party to the brothers and sisters of Kawaduji therefore, the suit is bad for non-joinder of necessary party and Kawaduji purchased one plot at Nagpur in the name of the plaintiff, which is not included in the list of properties mentioned in the suit and as the entire properties have not brought into the common hotchpotch, the suit is liable to be dismissed.

8. The appellant feeling aggrieved by the said judgment and decree preferred Regular Civil Appeal No.327 of 2019 before the Court of District Judge, Nagpur which came to be dismissed by confirming the judgment and decree of the trial Court, vide impugned judgment and decree dated 10.10.2022.

9. The learned counsel for the appellants argues that the sister and brothers of Kawaduji were not made party to the suit. It is submitted that the sisters of Kawaduji were not made party on the ground that they had already relinquished their rights in the suit property. However, to prove the partition between the brothers and Kawaduji and relinquishment by the sisters of Kawaduji in favour of their brothers, they were necessary party to the suit and in absence of them as

party, it cannot be said that the partition between Kawaduji and his brothers and relinquishment of rights by the sisters of Kawaduji, are proved in this case.

10. Admittedly, the brothers of the Kawaduji have not raised till date any challenge to the partition and similarly the sisters of Kawaduji have also not raised any dispute about relinquishment of their rights in favour of Kawaduji and their other brothers.

11. Thus, on the said ground, the appeal at the instance of widow and sons of Kawaduji cannot be entertained and thus, in absence of any any substantial question of law involved in the present second appeal, it is **dismissed**.

[ANIL S. KILOR, J.]