



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 81 OF 1993
WITH
CIVIL APPLICATION NO. 936 OF 1993 IN SA/81/1993

1. Narayan s/o. Tukaram Patil (Indrale) (*died*)
Through LR's.

1-B Dadarao s/o. Narayan Indrale

1-C Avinash s/o. Narayan Indrale

1-D Bhanudas s/o. Narayan Indrale

1-E Deelip s/o. Narayan Indrale

1-F Shivaji s/o. Narayan Indrale

1-G Bhagiratha w/o. Ganpat Chewale

1-H Sarubai w/o. Narayan Kalme

1-I Satyabhama w/o. Ramchandra Kalme

1-J Kalinda w/o. Nivrutti Birle

2. Kashibai w/o. Kishanrao Padile (*died*) **... APPELLANTS**

(Appellant No.1 & 2 – Ori. Defendant Nos.2 & 3)

VERSUS

1. Mohan s/o. Rama Jadhav
2. Jeevan s/o. Rama Jadhav
3. Prakash s/o. Rama Jadhav
4. Rama s/o. Malhari Jadhav (*died*)
Through LR's. respondents at serial Nos.1 to 3

5. Baliram s/o. Ramchandra Jadhav

... RESPONDENTS

(Resp. Nos.1 to 3 – Ori. Plaintiff Nos.1 to 3
Resp. No. 4 – Ori. Defendant No.1 and Resp. No. 5
– Ori. Defendant No.4)

...
Mr. S.S. Manale h/f. Mr. V.D. Gunale and P.G. Gunale – Advocate for Appellants

Mr. V.S. Badakh h/f. Mrs. C.S. Deshmukh – Advocate for Respondent Nos.1 to 3

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 12.09.2024

PRONOUNCED ON : 07.10.2024

JUDGMENT :

1. Heard learned Counsel for the rival parties.
2. The present appellants who are the legal representatives of original appellant No.1 – Narayan s/o. Tukaram Patil (Indrale) are prosecuting the present appeal which is filed against the judgment and decree in Regular Civil Appeal No. 88 of 1988 preferred by the present respondent Nos.1 to 3, passed by the learned III Additional District Judge, Latur, Dist. Latur (*hereinafter referred to as “the learned First Appellate Court”*) on 25.08.1992. Under the judgment and decree in the appeal, the learned First Appellate Court has set aside the judgment and decree passed by the Civil Judge, Junior Division, Ahmedpur (*hereinafter referred to as “the learned Trial Court”*) in Regular Civil Suit No. 304 of 1981 whereby the suit was dismissed.

3. **Background facts of the case are as under :**

The present respondent Nos.1 to 3 alongwith their brother Babu s/o. Rama Jadhav had filed the aforesaid suit for cancellation of sale–deeds dated 17.07.1975 and 15.12.1981 executed by their father – Rama s/o. Malhari Jadhav i.e. original defendant No.1 in favour of present appellants and also the sale–deed in respect of suit house executed in favour of present respondent No.5. The learned Trial Court had dismissed the suit vide judgment and order dated 18.06.1988 but the learned First Appellate Court reversed the said findings and allowed the same by directing the present appellants to file suit for partition for determination of their shares through their vendor Rama Malhari Jadhav i.e. present respondent No.4. Thus, the present appeal is filed.

4. Heard rival submissions and also perused the documents on record. It is significant to note that, the learned First Appellate Court had advised the present appellants to file suit for partition by considering the rights of respondent Nos.1 to 4 in the suit properties namely land survey No. 80/AA admeasuring 4 acres 31 gunthas and suit house situated at Ujlamb, Tq. Ahmedpur. This is challenged by the original defendant Nos.2 and 3 who are present appellants. This Court has also formulated the substantial questions of law under order dated 25.06.2024 which are as follows :

(I) *Whether it is established by the appellants that deceased defendant No. 1 Rama i.e. their father was having bad habits and to satisfy the same, he sold the suit properties to the present appellants without any legal necessity ?*

(II) *Whether the suit is properly valued ?*

5. However, it is extremely important to note that, the present appeal has already been abated against appellant No. 2 – Kashibai w/o. Kishanrao Padile i.e. original defendant No.3 and thereafter her legal representatives were not brought on record. Further, respondent No.5 who was original defendant No. 4 did not challenge the impugned judgment and decree passed by the learned First Appellate Court. Thus, the present appeal is now being prosecuted only by legal representatives of appellant No.1 - Narayan s/o. Tukaram Patil (Indrale) i.e. original defendant No.2. Though the substantial questions of law are framed by this Court as aforesaid, but during the course of argument it was brought to the notice by the learned Counsel for respondent Nos.1 to 3 that as per the impugned judgment and decree dated 25.08.1992 passed by the learned First Appellate Court, both the appellants had already filed the suit for partition bearing Regular Civil Suit No. 66 of 1993 against present respondent Nos.1 to 3 as well as 5 for claiming shares of deceased Rama Malhari Jadhav in the suit properties. The certified copy of decree in the said suit is also produced on record and on perusal of the same it is evident that the then joint Civil Judge Junior Division, Ahmedpur vide order dated 25.11.1997 granted 1/5th share to the appellants in equitable manner in the suit lands. However, thereafter it appears from the documents on record that, present appellant No. 2 – Kashibai w/o. Kishanrao Padile had challenged the said decree by filing Regular Civil Appeal No. 210 of 1997 before the learned

District Judge, Latur, Dist. Latur wherein she entered into compromise with present respondent Nos.1 to 3 and accepted 1 acre 5 gunthas land from the suit land. Further, it appears that the present appellant No. 1 - Narayan s/o. Tukaram Patil (Indrale) had also filed one Regular Civil Appeal No. 208 of 1997 against the decree in Regular Civil Suit No. 66 of 1993 and in the said suit the then learned Joint District Judge, Latur, Dist. Latur modified the decree and it was declared that, appellant i.e. present appellant No. 1 - Narayan s/o. Tukaram Patil (Indrale) was having 1/4th share in the suit land bearing block Nos. 157 and 158 situated at village Ujalamb, Tq. Chakur, Dist. Latur. Thus, it appears that the judgment and decree dated 25.08.1992 filed before the learned First Appellate Court has already been obeyed by the present appellants by filing the suit for partition as directed and therefore, once it is acted upon then there is no question of deciding the present appeal further.

6. Learned Counsel for the appellants submits that, the appeal can still be continued to finalize the shares of the appellants which is wrongly determined by the concerned District Court in subsequent proceedings. However, it is extremely important to note that, the present appeal is already abated against appellant No. 2 – Kashibai w/o. Kishanrao Padile, who had already compromised the matter with respondent Nos.1 to 3 in respect of her share. Moreover, original appellant No. 4 had also proceeded for determination of his share by way of appeal filed by him as mentioned above, therefore the decree

has been challenged in the present appeal passed by the learned First Appellate Court is already complied and therefore, the present appeal has become infructuous. For mistake in determining the shares of the appellants by the concerned Court, if any, the appellants may choose any remedy as permissible in law.

7. In view of the same, the present appeal alongwith pending Civil Application No. 936 of 1993 stands disposed of being infructuous.

[SANDIPKUMAR C. MORE]
JUDGE