



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**SECOND APPEAL NO. 83 OF 2022**  
**WITH**  
**CIVIL APPLICATION NO. 2320 OF 2022 IN SA/83/2022**

Fulchand Chintaman Prabhune  
And Others

... Appellants

**VERSUS**

Sumitra Revchand Prabhune  
And Others

... Respondents

.....  
Ms. M.A. Kulkarni, Advocate for Appellants  
Mr. V.B. Jadhav, Advocate for Respondents  
.....

**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 10<sup>th</sup> JUNE, 2024**

**ORDER :**

1. By this second appeal, original defendants have challenged the judgment and decree passed by learned 2<sup>nd</sup> Joint Civil Judge, Senior Division, Ahmednagar in Regular Civil Suit No.570/1999 and judgment and decree passed by learned District Judge, Ahmednagar in Regular Civil Appeal No.110/2013.

2. Respondents/plaintiffs filed suit for partition, separate possession and for mesne profits. Ananda Prabhune was the ancestor of plaintiffs and defendants. He had two sons Revchand and Chintaman. Plaintiff no.1 is wife of Revchand

and plaintiff Nos.2 to 6 are the children. Defendant Chintaman is brother of Revchand and defendant Nos.2 to 6 are sons of Chintaman and nephews of Revchand. Agricultural land described in para No.1-F and 1-H situated within the limits of Pimpalgaon Malwi, Taluka and District-Ahmednagar are the subject matter of the suit.

3. Plaintiffs claimed that suit properties are ancestral properties of plaintiffs and defendants and they have half share in the suit properties. Defendants are in possession of suit properties and they were taking income from it. Defendants are not giving any income of the suit properties to plaintiffs. Hence, they instituted the suit for partition, possession and mesne profit.

4. Defendant Nos.4 to 6 by filing written statement resisted the suit. The said written statement is adopted by defendant Nos.1 to 3. Defendants denied the relationship. They claimed that plaintiff no.1 is not legally wedded wife of Revchand, and Revchand married with Babita as per Christian rites. Babita has two daughters from Revchand. Out of two, one is married and another is unmarried. Defendants claimed that plaintiff Nos.1 to 6 are not legal heirs of Revchand. They also denied that suit properties are ancestral properties or

joint family properties. They denied that plaintiffs have half share in the suit properties. They claimed that Revchand was residing out of village for service. For more than 50 years, he had not visited the suit properties. Since more than 50 years, defendants are in possession of suit properties, and therefore, alternatively they claimed that they become owner of the suit properties by adverse possession. They also claimed that Gat No.465, 917/1, 917/2 and 59 were having old survey Nos.410/3 and 444/1. These lands are Mahar watan lands and defendant no.1 alone had deposited amount for re-grant on 24.01.1967. Therefore, Revchand has no right in the suit properties.

5. Trial Court framed issues and recorded evidence of both the parties and partly decreed the suit. It was declared that plaintiff No.1 to 6 together have half share in the agricultural suit properties and defendant Nos.1 to 6 together have half share in the suit land. Plaintiffs were held entitled for separate possession of their share. Precept was directed to be sent to the Collector, Ahmednagar as per section 54 of the Code of Civil Procedure for effecting partition. Direction is issued to conduct separate inquiry under Order 20 Rule 12 of the Code of Civil Procedure for mesne profit.

6. Being aggrieved by the Trial Court's judgment and decree, defendants unsuccessfully challenged it by filing Regular Civil Appeal No.110/2013.

7. Heard learned advocate for appellants and learned advocate for respondents. Perused the record, written notes of arguments and citations relied upon by appellants.

8. Learned advocate for appellants strenuously submitted that plaintiff no.1 is not legally wedded wife of deceased Revchand. On her behalf, power of attorney holder was examined, who had no special knowledge about her marriage with deceased Revchand. Hence, his evidence ought to have been discarded by the Trial Court and the Appellate Court. Further submission is, the share determined by the Court below is contrary to section 33 of the Indian Succession Act. The suit is barred under section 27 of the Indian Limitation Act. Both the Courts below have erred in not framing of issue in respect of Mahar watan land. Section 5 of the Maharashtra Inferior Watan Act prohibits partition without permission of the Collector. According to her, in terms of section 33 of the Indian Succession Act, 1/3rd share will go to the mother/widow and 2/3rd share will go to the daughters,

sons and children of Ananda, as such, plaintiff if held to be lawful wife of Revchand, she will get 1/3rd share out of 2/3rd share, which comes to 1/9. According to her, shares are not properly determined by the Court below. In support of her submissions, she relied on *Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. And Others, (2005) 7 SCC 217* and *Shankar Shridharrao Deshmukh Vs. Vyankatesh Shankarrao Deshmukh and Others, 2007(1) Mh.L.J. 541*.

9. Per Contra, learned advocate for respondents/plaintiffs supported both the judgments. He submitted that findings of fact recorded by both the Courts below are not liable to be interfered in the present matter. He submitted that plaintiff no.1 is getting family pension of Revchand Prabhune. After the death of Revchand, heirship certificate was issued in favour of plaintiffs by the competent authority. He further submitted that plaintiffs and defendants are descendants of Ananda, who in his life time partitioned the properties between Revchand and Chintaman. Mutation entries to that effect are brought on record. There is no substantial question of law involved in the present second appeal and hence the appeal is liable to be dismissed with costs.

10. Though the defendants have contended that Revchand had married with Babita, but defendants have failed to substantiate the said contention by leading cogent evidence. On the other hand, plaintiffs have produced documents i.e. Exhibit-81, the certificate issued by Bank of Maharashtra showing that Smt. Sumitra Revchand Prabhune is receiving family pension of late Revchand Ananda Prabhune. Exhibit-75, certificate dated 14.06.1985 issued by Gram Panchayat showing that Saraswati Dhavare had married with Revchand Ananda Prabhune. At Exhibit-78, plaintiffs have produced heirship certificate issued by competent authority, which shows that plaintiffs are legal heirs of Revchand Anandrao Prabhune. In the death certificate of Revchand (Exhibit-79) name of plaintiff no.3 is mentioned as Sunil Revchand Prabhune. Plaintiffs have also produced copy of mutation entry No.3548 by which names of plaintiffs were mutated in the 7/12 extract of suit properties. Therefore, there is sufficient evidence on record to show that plaintiffs are legal heirs of Revchand Ananda Prabhune.

11. Plaintiffs have also placed on record mutation entry No.3768 (Exhibit-73), which shows that Ananda, father of Revchand had filed application on 15.08.1958, thereby

allotting the suit properties to the share of Chintaman and Revchand. Accordingly, mutation entry no.3548 (Exhibit-72) was effected. 7/12 extract of the suit properties in which names of plaintiffs are mutated to the suit properties are also brought on record by plaintiffs.

12. In view of the fact that parties are Indian Christian, as per section 33 of the Indian Succession Act, trial Court has held that, kindred have equal share in the property and hence plaintiffs have proved that Revchand and Chintaman have half share each. Therefore plaintiffs and defendants were awarded half share.

13. It appears from the record that issue of adverse possession was not pressed into service by the defendants in the trial Court.

14. Considering the aforestated evidence on record, trial Court is justified in passing the impugned judgment and decree by recording cogent reasons.

15. Appellate Court has confirmed the findings of fact recorded by the trial Court and has observed that the statements of plaintiffs' power of attorney and defendant No.1 are equally on oath. But, the plaintiffs' case is supported by documentary evidence of mutation entries, heirship certificate

and certificate of pension in favour of plaintiff No.1. Both the Courts have rightly come to a conclusion that suit properties are ancestral properties and defendant No.1 and Revchand, and after the death of Revchand, plaintiffs inherited Revchand's share.

16. There is no illegality or perversity in both the judgments. No error of law or jurisdictional error is committed by Courts below. No case is made out by appellants to interfere in concurrent findings of fact recorded by both the Courts below. There is no substantial question of law involved in the present second appeal. The second appeal sans merit is dismissed. No order as to costs.

17. Accordingly, civil application also stands disposed of.

**[NITIN B. SURYAWANSHI ]  
JUDGE**