

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 152 OF 2024

WITH

CIVIL APPLICATION NO. 6380 OF 2024

Mirabai Shankar Mhaske

Age : 58 yrs, occ : agri.,

R/o Ranjani, Tal. Shivgaon,

District Ahmednagar

Appellant

Versus

1. Dattatray Jagannath Mhaske
Age : 56 yrs, occ : agri.,
R/o Gogalgaon, Tal. Newasa,
District Ahmednagar

2. Yashodabai Khandu Kadam
Age : 59 yrs, occ : agri.,
R/o as above.

3. Latabai Ambadas Chavan
Age : 57 yrs, occ : agri.,
R/o Ranjani, Tal. Shevgaon,
District Ahmednagar.

4. Rameshwar Shankar Mhaske
Age : 35 yrs, occ : agri.,
R/o as above.

5. The Secretary, Gogalgaon Vividh
Karyakari Seva Sahkari Society Ltd.,
Gogalgaon, Taluka Newasa,
District Ahmednagar

6. Sumanbai Bapusaheb Daule
Age : 62 yrs, occ : agri.,
Tal. Vaijapur,

Respondents

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Mr. C.K. Shinde, Advocate for the appellant.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 10.07.2024

Order :

1. The present Second Appeal is directed against the judgment and decree dated 25.10.2021 passed by the learned Civil Judge (Senior Division), Newasa i.e. the learned trial Court in Regular Civil Suit No. 567/2016 filed by present respondent No. 6 i.e. the original plaintiff for partition and separate possession. The learned trial Court has decreed the said suit and thereby granted one-fifth share in the suit properties to the original plaintiff. The present appellant i.e. original defendant No.3 thereafter filed appeal against the said judgment and decree of the learned trial Court vide Regular Civil Appeal No.8/2023 before the District Judge-2, Newasa i.e. the learned first appellate Court. However, the learned first appellate Court, vide judgment and order dated 03.02.2024, confirmed the judgment and decree passed by the learned trial Court. Hence, this Second Appeal.

2. Learned Counsel for the appellant submits that both the learned Courts below failed to appreciate the evidence on record. According to him, both the learned Courts below failed to consider the fact that all the joint family properties were not included in the suit for partition

and that the decree for partition was in fact passed contrary to the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. According to him, both the learned Courts below did not consider joint family debt which was due at the time of passing decree. Thus, according to him, the following questions of law are involved in this appeal :

- (i) Whether the suit was not maintainable for want of inclusion of all joint family properties?
- (ii) Whether the existing debt on the joint family properties was properly considered while passing the decree of partition?
- (iii) Whether the decree passed by both the learned Courts below is contrary to the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act?

3. Heard learned Counsel for the appellant and also perused the impugned judgment.

4. It is extremely important to note that relationship between the parties is not in dispute. Moreover, it is also not disputed that the suit properties mentioned in the plaint are joint family properties. Learned Counsel for the appellant has raised three substantial questions of law as mentioned above. So far as the aspect of non inclusion of all joint family

properties is concerned, the appellant is claiming that plot No.31 located at village Gogalgaon, Taluka Newasa was not included. No such grievance was raised by the appellant before the learned trial Court. However, despite absence of such grievance before the learned trial Court, the learned first appellate Court has considered the same and on the basis of documents in respect of record of right the said plot No.31, it has been observed that the said property is not owned by any of the parties to the suit, but it was owned by one Damodar Tatya Mistri. As such, no such substantial question of law appears to be involved in the matter at this stage.

5. So far as the second substantial question of law is concerned, it is in respect of non consideration of joint family debt which existed at the time of passing both the impugned judgments. However, again it can be seen that no such averment was there from the side of the appellant before the learned trial Court. However, despite all the said fact, the learned first appellate Court has dealt with this aspect and specifically observed that such ground should not have been taken in the first appeal for the first time. Moreover, learned first appellate Court has also discarded the said aspect by making observation that it did not find any substance in the

said issue as nothing was placed on record by the defendants, whether the said loan obtained by the concerned while acting as Karta of joint family or it was taken for the benefit of joint family. It is specifically observed that the loan was taken by original defendant No.1 Dattatray and nothing is there to show that he was acting as 'Karta' of joint family at the relevant time. As such, this substantial question of law also does not exist as it is answered satisfactorily.

6. So far as the third and last substantial question of law is concerned, it relates about the decree being bad in view of the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. This aspect is considered by the learned first appellate Court in appropriate manner by observing that in partition suit the court is supposed to declare the rights of the parties who are claiming their separate share in a joint family property. It has been observed that the District Collector is under obligation to see that the execution of decree of partition should not be made in contravention with the provisions of Prevention of Fragmentation and Consolidation of Holdings Act. Therefore, no substantial question of law on this aspect appears to be involved in this matter.

7. Considering the above aspects, the aforesaid substantial questions of law are either answered satisfactorily or not in existence at this stage. In view of the same, the Second Appeal stands dismissed at admission stage alongwith pending Civil Application No.6380 of 2024 and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)