



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

942 SECOND APPEAL NO. 774 OF 2018

1. Nandubai w/o. Balbhim Tak ... APPELLANT

VERSUS

1. Baban s/o. Eknath Udavant (Sonar),
2. Malanbai w/o. Govardhan Udavant (Sonar),
3. Rajdhani w/o. Rameshwar Dhale ... RESPONDENTS

...
Mr. A.K. Shingare h/f. Mr. K.F. Shingare – Advocate for Appellant
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 27th August, 2024

PER COURT :

1. The appeal is already fixed for final hearing at admission stage by framing substantial question of law that, whether the learned First Appellate Court erred in determining the share of present appellant i.e. original defendant No.3 in Regular Civil Suit No.277 of 2008.

2. Admittedly, the Hon'ble Apex Court in the case of **Vineeta Sharma Vs. Rakesh Sharma and Others** reported in *2020 (9) SCC 1* has held that, sister or female coparcener is having equal right in the

coparcener property as that of brother by making operation of Section 6 of the Hindu Succession Act as retrospective.

3. It appears that, the learned Trial Court i.e. Joint Civil Judge, Junior Division, Bhoom has allowed the counter claim filed by the present appellant in respect of the suit property and thereby granted her 1/3rd share in the suit property alongwith the enquiry of mesne profits in respect of said share. It is significant to note that, the original plaintiff – Baban Eknath Udavant (Sonar) i.e. brother of present appellant though filed suit for declaration and ownership bearing Regular Civil Suit No. 277 of 2008 but subsequently withdrew the same.

4. It is to be noted that, the learned First Appellate Court i.e. Ad-hoc District Judge, Bhoom has modified the decree passed by the learned Trial Court by reducing the share of the present appellant by allowing the appeal bearing Regular Civil Appeal No. 41 of 2015 of original plaintiff – Baban Eknath Udavant (Sonar). However, as per the observations of Hon'ble Apex Court in the aforesaid case of **Vineeta Sharma** (*supra*) the present appellant being the female coparcener is having the equal right as that of other coparceners. The relationship between the parties is not at all disputed. Moreover,

the nature of the suit properties being an ancestral properties of the contesting parties, is also not disputed. Thus, in view of the same, judgment and decree passed in Regular Civil Suit No. 277 of 2008 needs to be restored as it is passed as per the current observation of Hon'ble Apex Court in the case of **Vineeta Sharma** (*supra*).

5. Learned Counsel for respondent No.1, brother – Baban Eknath Udavant (Sonar) vehemently argued that, atleast the order of learned Trial Court in respect of conducting enquiry regarding 1/3rd share of the appellant for determination of mesne profits be set aside as the name of appellant was very much there in the record of right of suit property. However, such argument cannot be accepted as the brother Baban had in fact filed suit for injunction claiming that, he was in possession of the entire property. Further, the appellant being married daughter of deceased Eknath Udavant was obviously residing with her husband after her marriage. Learned Counsel for respondent No.1 also tried to argue that, the learned First Appellate Court passed appropriate judgment by considering the prevailing observation of Hon'ble Apex Court in the case of **Prakash Vs. Phulavati and Others** reported in *(2016) 2 SCC 36* in respect of Section 6 of the Hindu Succession Act. However, during the pendency of this litigation the Hon'ble Apex Court has modified its

view and the application under Section 6 is made retrospectively applicable. As such, this submission can also not be considered. In view of the same, the Second Appeal No.774 of 2018 stands allowed and the judgment and decree passed by the learned First Appellate Court in Regular Civil Appeal No. 41 of 2015 dated 02.01.2018 is quashed and set aside and the judgment and decree passed by the learned Trial Court in Regular Civil Suit No. 277 of 2008 stands restored and confirmed.

6. The Second Appeal is accordingly disposed of alongwith pending Civil Applications, if any.

[SANDIPKUMAR C. MORE]
JUDGE