



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 86 OF 2024
WITH
CIVIL APPLICATION NO. 4408 OF 2024
IN SECOND APPEAL NO. 86 OF 2024
WITH
SECOND APPEAL NO. 88 OF 2024
WITH
CIVIL APPLICATION NO. 4412 OF 2024
IN SECOND APPEAL NO.88 OF 2024

- (1) Laxmibai w/o. Fulsing Usare,
- (2) Shakuntala w/o. Gulabsing Meher,
- (3) Rekha w/o. Padamsing Gomladu,
- (4) Aruna w/o. Devsing Meher

... APPELLANTS

(Ori. Defendants Nos.1, 4 to 6)

VERSUS

- (1) Pralhadsing s/o. Fulsing Usare,
- (2) Ramkisan s/o. Fulsing Usare,
- (3) Gajraj s/o. Fulsing Usare

... RESPONDENTS

(Respondent No.1 – Ori. Plaintiff and
Respondent Nos.2 & 3 - Ori. Defendant Nos.2 & 3)

...
Mr. Gajanan S. Shete – Advocate for Appellants
Mrs. A.N. Ansari – Advocate for Respondent No.1
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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 12th July, 2024

ORDER :

1. Heard rival submissions on admission.

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2. The appellants who are the original defendant Nos.1 and 4 to 6 in Regular Civil Suit No.98 of 2015 have filed these Second Appeals against the common judgment and order passed by the District Judge – 3, Jalna (*“learned First Appellate Court”* for short) in Regular Civil Appeal No.64 of 2020 and Regular Civil Appeal No. 114 of 2023 dated 21.02.2024 whereby the learned First Appellate Court has modified the judgment and decree passed by the learned Civil Judge Junior Division, Jafrabad, Dist. Jalna, (*“learned Trial Court”* for short) in the aforesaid suit.

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

The present respondent No.1 in both these appeals who is the original plaintiff had filed the aforesaid Regular Civil Suit No.98 of 2015 against the present appellants and other respondents before the learned Trial Court for partition. The learned Trial Court on 14.10.2020 partly decreed the said suit and thereby allotted 1/7th share to the plaintiff in one of the suit property i.e. Gat No.27 but rejected him share in other suit property i.e. Gat No.274 situated at village Pasodi, Tq. Jafrabad, Dist. Jalna by observing that, the present appellant No.1 is the absolute owner of the same. The present appellant then preferred Regular Civil Appeal No.64 of 2020 before the learned First

Appellate Court for challenging the said decree. On the other hand, the present respondent No.1 – plaintiff also filed cross Regular Civil Appeal No.114 of 2023 for denying him share in the other suit property i.e. Gat No.274. Then on 21.02.2024 the learned First Appellate Court vide common judgment decided both the aforesaid appeals and dismissed Regular Civil Appeal No.64 of 2020 filed by the present appellants and by allowing Cross–Appeal No.114 of 2023 filed by the present respondent No.1 – plaintiff granted him share in both the suit properties. Hence, these Second Appeals.

4. Learned Counsel for the appellants vehemently argued that, the learned First Appellate Court definitely erred in granting share to respondent No.1 – plaintiff in Gat No.274 which is in fact separate property of appellant No.1 – Laxmibai. He pointed out that, the learned Trial Court had refused share to the respondent No.1 – plaintiff in the said Gat number. Thus, according to him the only substantial question of law involved in these appeals is whether the suit land Gat No.274 out of suit properties is separate property of appellant No.1- Laxmibai ? However, he admitted the relationship between the parties and also apportionment of shares among them as done by the learned Trial Court.

5. On the other hand, learned Counsel for respondent No.1 – plaintiff supported the judgment of learned First Appellate Court and submitted that, the learned Trial Court has rightly held that, Gat No.274 is an ancestral property of the parties as Laxmibai failed to establish the fact that, it was purchased by her through her separate income. As such, she prayed for dismissal of both the appeals at admission stage.

6. It is significant to note that, the learned Trial Court has observed that, though the plaintiff i.e. respondent No.1 could not establish property Gat No.27 as ancestral land of Fulsing i.e. his father, but when the relationship between the parties is not in dispute, the plaintiff got 1/7th share in the said Gat No.27 on death of Fulsing as per Section 8 of the Hindu Succession Act. There is no serious dispute about the same. However, the appellants are having serious dispute about partition in the land Gat No.274. On going through the judgments of both the learned Courts below, it appears that parties are claiming through Fulsing who was having other properties also than the present suit property but it has come on record that, other properties are already partitioned and only the partition was yet to be effected in the present suit properties. It was claimed by the appellants/defendants that, Gat

No.27 was self acquired property of Fulsing whereas Gat No.274 was self acquired property of appellant No.1 – Laxmibai, who allegedly acquired the same by selling out properties of her own parents. However, the evidence on record as discussed by both the learned Courts below does not disclose anything that, Laxmibai succeeded in proving the fact that after selling property of her own parents she acquired Gat No.274.

7. On the contrary, it has come on record that, the present appellant No.2 who is the original defendant No.4 had filed one civil suit bearing Regular Civil Suit No.170 of 2015 for securing perpetual injunction and in the said suit the original defendant No.2 – Ramkisan had admitted that, both the suit properties namely Gat No.27 and 274 were their ancestral properties. As such, on failure of appellant No.1 – Laxmibai in establishing that, she purchased the land Gat No.274 separately and from her own income, the possible inference needs to be drawn that the said property is also ancestral land of the rival parties. Therefore, no substantial question of law as raised by the learned Counsel for the appellants appears to be involved in these appeals. Consequently, both the Second Appeals filed by the appellants stand dismissed at admission stage alongwith pending Civil

Applications therein namely, Civil Application Nos. 4408 and 4412 of 2024.

8. The Second Appeals are accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE