



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 SECOND APPEAL NO. 96 OF 2015
WITH
CIVIL APPLICATION NO. 3003 OF 2015
IN SA/96/2015

SARSANTABAI NARAYAN BHAVAR AND OTHERS
VERSUS
KALABAI RANGNATH DALVI AND OTHERS

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Mr. C. V. Bodkhe h/for Mr. Gore Ravindra Vitthal, Advocate for
Appellant/Applicant

CORAM : Y. G. KHOBRAGADE, J.
DATE : 30th April, 2024

ORDER:

1. Heard the learned counsel appearing for the appellants at length.
2. The present appeal is directed against the judgment and decree dated 24.01.2023 passed by the learned District Judge-3, Jalna in Regular Civil Appeal No. 143 of 2010, whereby, the appeal of the appellants/original defendants came to be dismissed and the judgment and decree dated 07.10.2010 passed by the learned Civil Judge, Junior Division, Bhokardan in Regular Civil Suit No. 147 of 2007 is confirmed.
3. Present Respondent Nos. 1 to 5 are the original plaintiffs and the present appellant Nos. 1 to 5 are the original defendant Nos. 2 to 6. Respondent No.6 is original Defendant No.1. For the sake of brevity, the

parties to the present appeal are referred in their original capacity as plaintiffs and defendants.

4. The plaintiffs had filed RCS No. 147 of 2007 and prayed for decree of partition, separate possession and declaration that they are having 5/7th share in the suit properties i.e. (1) Gat No.293 admeasuring 88 R, (2) Gat No.311 admeasuring 7 H 67 R and (3) Gat No. 318 admeasuring 47 R of village Wadshed.

5. According to the plaintiffs, deceased Bhika Gangaram Bhavar, owned the suit properties. He was having six daughters i.e. Plaintiff Nos. 1 to 5 and Defendant No.1 and one son deceased Narayan. The Defendant No.2 is a wife of deceased Narayan and Defendant Nos. 3 to 6 are daughters of Narayan. The suit properties are their ancestral joint Hindu family properties but said properties never been partitioned by meets and bound. Some lands were transferred in the name of Defendant No.1 Leelabai and Defendant No.2 Sarsantabai-widow of Narayan. After death of Bhika Bhavar, suit properties were mutated in the name of Narayan as Karta of joint Hindu family property. During life time, their brother Narayan mutated 4 H land out of 6 H 70 R from Gat No. 311 in the name of his wife-defendant no.2. According to the plaintiffs, mutation entry in the revenue record was effected by managing the revenue authority by deceased Narayan in order to avoid to give share to the plaintiffs.

6. Defendant No.1 had filed written statement at Exh. 20. Defendant no. 2 to 6 had filed their written statement at Exh. 24. The defendants admitted that Bhika Bhavar was the original owner who died prior to 40-50 years. After death of Bhika Bhavar, his son Narayan i.e. husband of defendant no.1 became Karta of Hindu Jointly family properties. Further, Narayan was minor at the time of death of Bhika Bhavar. Therefore he brought defendant No.1 and her husband Kisan Gavande at village Wadshed to look after the suit properties and after attaining majority, Narayan gave 1 H land out of Gat No. 311 to defendant No.1 Leelabai. Subsequently defendant no.1 sold the said land to one Ganpat Patilba by registered sale deed. The defendants claimed that prior to 10 years, all the defendants raised demand about their shares during life time of Shri Narayan. Accordingly, Narayan, husband of Defendant No.1 gave Rs.35,000/- to each of the co-sharers/plaintiffs and all of them relinquished their shares in favour of Narayan. Therefore, the defendants had prayed for dismissal of the suit.

7. The learned trial court framed issues at Exh. 35. The plaintiffs filed evidence affidavit of PW-1 Chandrakalabai at Exh.39 and also evidence affidavit of PW-2 Vitthal at Exh.50. Defendant No.1 did not adduce evidence. However, Defendant Nos. 2 to 6 filed evidence affidavit of Defendant No.2 Sarsantbai at Exh.55 and also examined DW-2 Sitaram Bhavar at Exh.62 and DW-3 Uttam Bhavar at

Exh. 63. Besides oral evidence, the parties to the suit proved documentary evidence i.e. 7/12 extracts and mutation entries.

8. On 07.07.2010, the learned Civil Judge, Junior Division, Bhokar Dist. Jalna passed the judgment and decree holding that the suit properties belong to Bhika Gangaram Bhavar who was owner of joint Hindu family properties of the plaintiffs and defendants. The properties never partitioned by meets and bound and the plaintiffs are having 5/7th share in the joint family properties. Though the defendants claimed that deceased Narayan had paid Rs.35,000/- to each of the co-sharer and in lieu of the said payment, the plaintiffs and defendant No.1 relinquished their shares in favour of Narayan. However, the defendants failed to prove about relinquishment of their share in favour of Narayan by accepting Rs.35,000/-. Similarly, 1 H land was given to defendant No.1 Leelabai, but she subsequently sold the said land to one Ganpat Patilba for consideration of Rs.10,000/-.

9. It is needless to say that as per the amended Section 6 of the Hindu Succession Act, which came into force with effect from 09.09.2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—(a) by birth become a coparcener in her own right in the same manner as the son;(b)have the same rights in the coparcenary property as she would have had if she had been a son. Since, the plaintiff Nos. 1 to 5 and Defendant No. 1 are daughters

and deceased Naryan is son of deceased Bhika Bhavar who owned the ancestral properties, the plaintiffs/daughters are having equal share in the suit properties alongwith defendant No.1 and deceased Narayan-who is husband of defendant No.2 and father of defendant Nos. 3 to 6.

10. Accordingly, the learned trial court ascertained the shares of the plaintiffs and passed decree. Original Defendant Nos. 2 to 5 filed Regular Civil Appeal No. 143 of 2010 and challenged the judgment and decree passed by the learned Trial Court on 0707.2010. However, the learned First Appellate Court dismissed the Appeal holding that the plaintiffs have 5/7th share in the joint family properties of Bhika Bhavar which does not appear perverse. The concurrent findings recorded by the both the court below does not appear to be illegal and perverse. Therefore, I do not find any substantial question of law involved in the present appeal. Accordingly, the second appeal stands dismissed. Parties to bear their own costs.

11. Pending Civil Application also stands disposed off.

(Y. G. KHOBRAGADE, J.)

JPChavan