



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.164 OF 2024

1. Sudhakar Wamanrao Munde,
2. Usha @ Avantika w/o. Sudhakar Munde,
3. Narayan Sudhakar Munde. ...Appellants
(Org. Defendants)

Versus

1. Shrikrushna Sudhakar Munde,
2. Anita Sudhakar Munde,
3. Ankush Wamanrao Munde (Died),
- 3/1. Kushabai Ankush Munde,
- 3/2. Sambhaji Ankush Munde,
- 3/3. Shankar Ankush Munde,
- 3/4. Sarika @ Kiskinda Satish Sanap. ...Respondents

WITH
CIVIL APPLICATION NO.6761 OF 2024
IN
SECOND APPEAL NO.164 OF 2024

1. Sudhakar Wamanrao Munde,
2. Usha @ Avantika w/o. Sudhakar Munde,
3. Narayan Sudhakar Munde. ...Applicants

Versus

1. Shrikrushna Sudhakar Munde,
2. Anita Sudhakar Munde,
3. Ankush Wamanrao Munde (Died),

3/1. Kushabai Ankush Munde,

3/2. Sambhaji Ankush Munde,

3/3. Shankar Ankush Munde,

3/4. Sarika @ Kiskinda Satish Sanap. ...Respondents

Adv. Arun V. Rakh for Appellants.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 9th DECEMBER 2024.

PC.:-

1. The Appellants/Original Defendant Nos.1 to 3 impugn judgment and decree dated 30th March 2024 passed by learned District Judge-3, Ambajogai, District Beed in Regular Civil Appeal No.50 of 2019, thereby confirming judgment and decree dated 5th September 2019, passed by learned Civil Judge, Junior Division, Parali Vajinath District Beed in Regular Civil Suit No.78 of 2009. [Hereinafter parties are referred as per original status in the suit for brevity and convenience].

2. The Respondent Nos.1 and 2 (Original Plaintiffs) instituted suit for partition, separate possession and mesne profit in respect of agricultural lands situated in Gat Nos.284, 285 and 298 at village Jirewadi, Taluka Parali, District Beed. The Plaintiffs are son and wife of Sudhakar Wamanrao Munde, i.e., Original Defendant No.1.

Whereas, Defendant Nos.2 and 3 are second wife and son born from her. The Plaintiffs' claimed for partition and separate possession of suit properties contending that it is an ancestral property of Defendant No.1. The Defendant No.1 performed second marriage with Defendant No.2 during subsistence of marriage with Plaintiff No.2.

3. The Defendant No.1 filed written statement contending that suit properties came to his share in partition but denied Plaintiffs claim for $1/3^{\text{rd}}$ share in suit property. According to him, suit was not properly valued. Insufficient Court fees has been paid. Hence, suit is liable to be dismissed. The Defendant No.4, who is real brother of Defendant No.1 filed written statement and pleaded suit property is his self acquired property. As per family arrangement, suit properties were mutated in the name of Defendant No.1. He claims that lands Gat Nos.282 and 286 have been purchased by him under registered sale deed. Therefore, Plaintiffs have no right to claim partition in that property.

4. The Trial Court framed issues, parties recorded respective oral evidence. Finally, Trial Court concluded that suit properties are ancestral properties of Defendant No.1, accordingly, Plaintiffs are entitled to $1/3^{\text{rd}}$ share each. Further, held that Defendant No.3, who is son born to Defendant No.1 out of second marriage is not entitled for any share. Consequently, partly decreed the suit. The Appellate Court

concurred with the findings recorded by Trial Court that suit property is an ancestral property and Plaintiffs are entitled for 1/3rd share each. However, modified the decree of Trial Court, thereby approving 1½ share in 1/3rd share of Defendant No.1.

5. Mr. Arun Rakh, learned Advocate appearing for the Appellants seeks to assail impugned judgment and decrees on the grounds that suit was undervalued, the Courts below failed to frame appropriate issues and points for consideration, there is non-compliance of provisions under Order 32 of Code of Civil Procedure, 1908 as Defendant No.3 - Narayan was minor and guardian was not appointed by the Trial Court, all properties were not brought in the common hotchpotch and law laid down by Hon'ble Supreme Court in case of *Revanasiddappa & Anr. Vs. Malikarjun & Ors.*¹ has been wrongly applied.

6. Having considered submissions advanced and after going through reasoning adopted by Court below in impugned judgments, it can be observed that there is no dispute as regards to relationship between the parties. The Plaintiffs are first wife and son of Defendant No.1, whereas Defendant Nos.2 and 3 are second wife and son of Defendant No.1. Defendant No.1 has categorically admitted in the written statement that suit properties are received by him towards his

¹ 2023 (10) SCC 1

share in partition. Written statement filed by Defendant No.1 has been adopted by other Defendants. In that view of the matter, there is no reason to look back and delve into contention that suit properties were not ancestral properties. It was a claim of Defendant No.4 i.e. brother of Defendant No.1 that suit properties are his self acquired properties. However, during pendency of suit, Defendant No.4 expired. There is no further evidence on record by which his stand can be supported. As such, there is no infirmity in finding recorded by Court below that suit properties are ancestral properties of Defendant No.1.

7. It is well settled that at the time of partition between father and son, mother will also get equal share in ancestral property. Consequently, both Courts below have concurrently held that Plaintiff Nos.1 and 2 and Defendant No.1 would get 1/3rd share each in the suit property. Admittedly, Defendant No.2 is second wife and Defendant No.3 is a son born from second marriage. They are not entitled to claim any right over ancestral property. However, upon partition of suit property, Defendant No.3 would get share in the property allotted to his father along with other heirs. Thus, in any case, Defendant No.3 cannot claim any right in undivided share of his father in ancestral property. The aforesaid principle of law has been recently elaborated by Supreme Court of India in case of *Revanasiddappa (supra)*. Clause Nos.81.3 and 81.10 which read as under:-

“81.3. While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in sub-section (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

81.10. The provisions of the HSA, 1956 have to be harmonised with the mandate in Section 16(3) of the HMA, 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above.”

8. In light of aforesaid exposition of law, no infirmity can be found in concurrent finding of Courts below on the aforesaid aspects.

9. Mr. Rakh, learned Advocate appearing for Appellants submits that suit is not properly valued. Apparently, Trial Court had framed Issue No.3 in pursuance to aforesaid objection. However, no specific finding has been arrived, but fact remains that Plaintiffs have claimed 1/3rd share in ancestral property and suit has been valued on the basis of their claim. A perusal of appeal memo filed before First Appellate Court shows that no specific ground was raised as regards to valuation of suit, only objection was as regards non-payment of proper Court fees, which does not appear to be correct. Even in present second appeal, no specific ground is raised demonstrating as to how valuation of suit was incorrect. Therefore, there is no substance in the aforesaid contention. The last submission advanced is as to non-appointment of

guardian to protect interest of Defendant No.3 in terms of order 32 of Code of Civil Procedure, 1908. The title clause of suit would show that Defendant No.3-Narayan was added as a party through the natural guardian i.e. Defendant No.1, who is father of Defendant No.3. Therefore, there was compliance of Order 32 of Code of Civil Procedure, 1908 thus, there is no substance in aforesaid contention. No substantial question of law arises for consideration in this second appeal. Hence stands dismissed.

10. In view of dismissal of second appeal, civil application is also dismissed.

(S. G. CHAPALGAONKAR, J.)