



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 405 OF 2022
WITH CIVIL APPLICATION NO. 9657 OF 2022

- (1) Rohidas S/o. Maruti Wani,
- (2) Shantabai W/o. Maruti Wani,
- (3) Prashant S/o. Rohidas Wani,
- (4) Chandrakala @ Pingalabai Rakhamaji Kadam,
- (5) Sunita W/o. Ananda Gunjal,
- (6) Nanda W/o. Subhash Dighe,
- (7) Ananda S/o. Dhondiba Gorde,

... APPELLANTS

(Ori. Defendants Nos.1 to 7)

VERSUS

- (1) Laxmibai W/o. Maruti Wani (Deceased),
- (2) Awantika @ Bhimabai W/o. Bhausaheb Dighe,
- (3) Bhimabai W/o. Bapusaheb Dighe,
- (4) Nababai W/o. Shivaji Umbarkar,
- (5) Rangubai Kisan Pansare,
- (6) Pundalik S/o. Ganwat Wani (Deceased),
- (7) Shamrao S/o. Namdeo Wani,
- (8) Bajirao S/o. Kundalik Wani

... RESPONDENTS

(Respondent No.1 to 5 – Ori. Plaintiff,
Respondent Nos.6 to 8 - Ori. Defendant
Nos.8 to 10)

...
Mr. Ankush N. Nagargoje – Advocate for Appellants

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 8th July, 2024

ORDER :

1. Heard learned Counsel for the appellants on admission. The present Second Appeal has been filed against the concurrent findings of both the learned Courts below.

2. Brief facts of the case are as under :

The present respondent Nos.1 to 5 had filed Special Civil Suit No.34 of 2004 for declaration, partition and perpetual injunction in respect of the suit properties mentioned therein against the present appellants/original defendant Nos.1 to 7. According to the plaintiffs, Maruti was common ancestor of the rival parties having two wives namely, plaintiff No.1 – Laxmibai and defendant No.2 – Shantabai. Plaintiffs claiming themselves belonging to the branch of Laxmibai whereas the defendants are from branch of Shantabai. The learned Joint Civil Judge Senior Division, Sangamner, Dist. Ahmednagar (*“the learned Trial Court”* for short) tried the aforesaid suit and allotted one half share in the suit properties to plaintiff Nos.2 to 5 and one half share to defendant Nos.1, 2 and 4 to 6. In

addition, the learned Trial Court had also declared three sale-deeds dated 06.02.2004 and 17.12.1999 executed by defendant No.1 in favour of defendant No.7 and by deceased Maruti Ganpati Wani in favour of defendant Nos.2 and 3 being illegal and void, and not binding on the shares of the plaintiffs. Against the said judgment and decree the present appellants had preferred Regular Civil Appeal No. 125 of 2012 before the learned District Judge – 2, Sangamner, Dist. Ahmednagar (*“the learned First Appellate Court”* for short), but it was dismissed vide judgment and order dated 04.04.2022. Hence, this appeal.

3. Learned Counsel for the appellants though admitted the nature of suit property being coparcenary property and relationship between the parties but raised only substantial question of law involved in this matter that, whether both the learned Courts below erred in cancelling the aforesaid sale-deeds which were executed prior to 20.12.2004 and especially were protected by the proviso of amended Section 6 of the Hindu Succession Act. He pointed out that, under the aforesaid proviso the plaintiffs are not entitled to get shares in the lands mentioned in those sale-deeds.

4. Admittedly, as per the proviso of Section 6 of the Hindu Succession Act, the disposition of property before 20.12.2004 is protected. For quick reference, I would like to reproduce Section 6(1) of the Hindu Succession Act alongwith proviso as follow :

On and from the commencement of the Hindu Succession (Amendment) Act, 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;*
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:*

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

5. However, the learned Counsel for the present appellants before the learned First Appellate Court appears to have relied upon the judgment of Hon'ble Apex Court in the case of **Prakash**

and Others Vs. Phulavati and Others reported in *2016 Mh.L.J., 1*, wherein scope of amended Section 6 of the Hindu Succession Act is discussed. The learned First Appellate Court has discarded the aforesaid proposition incorporated in proviso of Section 6 of the Hindu Succession Act by observing that, the aforesaid sale-deeds were already proved illegal and without consideration, and therefore not binding upon the plaintiffs. However, now the Hon'ble Apex Court has accepted the application of amended Section 6 of the Hindu Succession Act being retrospective and ruled that, daughters would get right in the coparcenary property by birth especially from 1956. Considering this aspect when the plaintiff Nos.2 to 5 were not party to the aforesaid disposition by way of sale-deed, the same cannot be considered as protected under the proviso of Section 6 of the Hindu Succession Act. The intention of legislature while amending Section 6 of the Hindu Succession Act is to see that the daughters shall get equal share as that of son as a coparcener. As such, considering this aspect no substantial question of law as raised by the learned Counsel for the appellants appears to be involved in this matter, therefore, considering the concurrent findings of both the learned Courts below, the Second Appeal must fail. As such, Second Appeal

stands dismissed at admission stage alongwith pending Civil Application No. 9657 of 2022.

6. The Second Appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE