



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 337 OF 2023

Kondabai w/o Ramchandra Telange & others .. Appellants

Versus

Ajay s/o Kahndukumar Telangpure (Parit) & others .. Respondents

Mr. G. D. Kale, Advocate for the appellants.

Mr. C. D. Biradar, Advocate for respondents No. 1 to 3.

CORAM : R. M. JOSHI, J.

DATE : 30th JANUARY, 2024.

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. Both the parties agree that record and proceeding is not required for the purpose of deciding this appeal.

3. Plaintiffs filed suit bearing Regular Civil Suit no. 483/2024 (Old No. 196/2012) seeking partition and separate possession of the suit properties. There is no dispute with regard to relationship between the parties and that the properties are ancestral properties of plaintiffs and defendants.

4. Learned Trial Court decreed the suit and granted share to plaintiffs along with defendants. Trial Court had taken into consideration the fact of filing of previous suit bearing Regular Civil Suit No. 303/2008 and observed that after amendment to Section 6 of Hindu Succession Act, plaintiffs acquired status of co-parcenors and obtainment of decree therein behind back of plaintiffs is not binding upon them. Said judgment and decree came to be questioned in Regular Civil Appeal No. 15/2017. Learned First Appellate Court allowed the appeal by holding that plaintiffs have not challenged the decree passed in Regular Civil Suit No. 303/2008 and on this ground alone suit was dismissed. There is no dispute about the fact that plaintiffs were not party to the said suit. The decree passed therein is not binding on plaintiff. In view of admitted fact about relationship between the parties and having regard to nature of suit properties as ancestral properties of plaintiff and defendants, the said judgment passed in Regular Civil Suit no. 303/2008 is in contravention of provisions of law i.e. Hindu Succession Act. A decree passed without joining all co-sharers to the suit is nullity. In such circumstances, it was not necessary for the plaintiffs to challenge said decree independently as exception thereto can be

raised even in collateral proceedings. The findings recorded by First Appellate Court therefore being perverse not sustainable.

5. First Appellate Court has dismissed the suit only on this ground and challenge to the judgment and decree passed by the Trial Court is not considered and decided on merit of the case. Hence, it is a fit case to set aside the impugned judgment and decree passed by the First Appellate Court in Regular Civil Appeal No. 15/2017. Substantial question of law that whether the First Appellate Court has committed error in dismissing the suit filed by plaintiffs only on the ground that plaintiffs have not challenged the decree passed in Regular Civil Suit no. 303/2008 wherein she was not party is answered in affirmative.

6. Hence, appeal stands allowed. Matter be relegated back to the First Appellate Court for decision afresh on merit.

(R. M. JOSHI)
Judge

dyb