



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 300 OF 2024
WITH CIVIL APPLICATION NO. 10451 OF 2024 IN SA/300/2024

1. Babasaheb s/o. Bhimrao Chalak

2. Ganesh s/o. Balasaheb Chalak

... APPELLANTS

(Ori. Defendant No.2 & 7 respectively)

VERSUS

1. Achutrao s/o. Bhimrao Chalak

2. Ashrubai @ Gangubai w/o. Bhimrao Chalak

3. Manik s/o. Bhimrao Chalak (Died)
Through L.Rs.

3/1. Prasad s/o. Manik Chalak

3/2. Bhagirathi @ Didi d/o. Manikrao Chalak

4. Vachalabai w/o. Bhagwat Mane

5. Kushwartabai w/o. Uttamrao Jagdale

6. Shilawati w/o. Bagwanrao Khupse

7. Sitabai w/o. Manikrao Chalak

... RESPONDENTS

(Resp. No.1 – Ori. Plaintiff, Resp. No.2 – Ori.
Defendant No.2, Resp. No. 3 to 6 – Ori. Defendant
No.3 to 6 & Resp. No. 7 – Ori. Defendant No.8)

...
Mr. Madhav C. Ghode a/w. Mr. P.D. Digraaskar – Advocate for Appellants

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 11th OCTOBER, 2024

ORDER :

1. Heard learned Counsel for the appellants on admission.
2. The appellants who are original defendant Nos.2 and 7 have filed this Second Appeal against the judgment and decree dated 22.03.2024 passed by the learned District Judge – 1, Parbhani (*hereinafter referred to as “the learned First Appellate Court”*) in Regular Civil Appeal No. 5 of 2018 whereby the judgment and decree dated 18.09.2014 passed by the learned Civil Judge, Junior Division, Pathri, Parbhani, Dist. Parbhani (*hereinafter referred to as “the learned Trial Court”*) in Regular Civil Suit No. 68 of 2011 is modified. Under the impugned judgment and decree the present respondent No.1 has been allotted with 1/7th share in the suit property i.e. Gat No. 29 admeasuring 02 H 44 R land at village Tura, Tq. Pathri, Dist. Parbhani.

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

The appellants alongwith respondent Nos.2 to 7 were the original defendants in the aforesaid Regular Civil Suit No. 68 of 2011 filed by present respondent No.1/plaintiff for partition in the suit property. The present respondent No.2 is mother of plaintiff whereas respondent No. 3 and appellant No.1 are his brothers and respondent Nos. 4 to 6 are his sisters. The learned Trial Court vide judgment and decree dated 18.09.2014 granted 1/3rd share to the respondent No.1/plaintiff in the suit

property. However, learned First Appellate Court modified the same and granted 1/7th share each to appellant No.1, respondent Nos.1 to 3 and 4 to 6. Hence, this Second Appeal.

4. Learned Counsel for the appellants submits that, both the learned Courts below have definitely erred in granting relief of partition in total suit property. According to him, the original owner – Bhimrao during his lifetime had already transferred half of the suit land to present respondent No. 2 – Ashrubai @ Gangubai w/o. Bhimrao Chalak i.e. his wife and therefore, Ashrubai was definitely entitled to sale the part of suit land to original defendant Nos. 7 and 8 by way of registered sale-deed dated 27.07.2011. According to him, following substantial questions of law are involved in this present matter :

- (a) Whether half share of the suit property allotted by Bhimrao to Ashrubai during his lifetime had become her absolute property ?*
- (b) Whether Ashrubai was empowered to sale the said half share to defendant nos.7 and 8 by way of registered sale-deed as executed ?*

5. It is significant to note that, the relationship between the parties is not disputed. Further, it is also not in dispute that, Bhimrao was father of plaintiffs/defendant Nos.2 to 6 and husband of defendant No. 1 – Ashrubai. It is to be noted that, the learned Trial Court by ignoring the

right of daughters of Bhimrao had granted 1/3rd share to the plaintiff. However, the learned First Appellate Court by considering the observation of Hon'ble Apex Court in the case of Vineeta Sharma Vs. Rakesh Sharma and Ors., decided on 11th August, 2020, also granted certain share to the daughters namely original defendant Nos.4 to 6. Apparently, there is no perversity found in the share determination of the learned First Appellate Court.

6. Learned Counsel for the appellants vehemently argued that, Bhimrao during his lifetime had given half share in the suit property to his wife – Ashrubai and therefore, only half share was available for partition in the learned Trial Court but both the learned Courts below have ignored the said fact. However, on going through the record it appears that, the original defendants including the appellants had not filed any written statement on record. On the contrary, in the appeal before the learned First Appellate Court the original defendants including the present appellants never raised any such ground about Ashrubai becoming absolute owner of half share of the suit property, which was allotted by Bhimrao by way of a partition. It is to be noted that, the appellants are claiming that, Bhimrao during his lifetime transferred the half suit land to his wife and mutated her name in the suit land. However, it is settled that, a revenue entry cannot conferred

title upon any person. Further, it is not on record whether any remaining defendants or the plaintiffs had consented for such mutation entry of alleged partition. Therefore, no substantial question of law of Ashrubai becoming absolute owner of half share of the suit property, is in existence in the present matter. Further, when it is held in negative that, Ashrubai had become an absolute owner atleast of half of the suit property, she was definitely not entitled to execute the registered sale-deed in favour of original defendant Nos.7 and 8. Therefore, considering all these facts no substantial questions of law as raised by the learned Counsel for the appellants are involved in this matter.

7. On the contrary, considering the fact that the relationship between the parties is not disputed, the share determination made by the learned First Appellate Court is definitely proper which is in the light of observation of Hon'ble Apex Court in the case of **Vineeta Sharma** (*Supra*). Therefore, no substance found in the present Second Appeal and accordingly, it stands dismissed at admission stage alongwith pending Civil Application No. 10451 of 2024.

[SANDIPKUMAR C. MORE]
JUDGE