



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.233 OF 2024
WITH
CIVIL APPLICATION NO.9546 OF 2024
IN
SECOND APPEAL NO.233 OF 2024**

1. Sangeeta W/o Dhondiba Kotalwar,
(Died, through Legal Heirs)
- 1-A. Dhondiba s/o Laxman Kotalwar,
Age: 60 years, Occu.: Agriculturist,
R/o Opposite Mahaveer Photograph,
Hanuman Mandir Road, Tq. Loha,
District: Nanded.
- 1-B. Sujit S/o Dhondiba Kotalwar,
Age: 30 yrs, Occu.: Agriculturist,
R/o Opposite Mahaveer Photograph,
Hanuman Mandir Road,
Tq. Loha, District: Nanded.
- 1-C. Sujata W/o Sandip Kotgire,
Age: 28 years, Occu.: Housewife,
R/o Opposite Mahaveer Photograph,
Hanuman Mandir Road,
Tq. Loha, District: Nanded.
2. Uma W/o Arun Buddha,
Age: 47 years, Occu.: Housewife,
R/o Chitgopa, Tq. Humanabad,
District: Bidar, State: Karnataka.

..Appellants
(Original Defendants)

Versus

1. Pashasab S/o Nabisab Bagwan,
(Died, through Legal Heirs)
- 1-A. Makbul @ Magbul S/o Pashasab Bagwan,
Age: 50 years, Occu.: Business and Agriculturist,
R/o Hindustan Colony, Bidar Road,
Tq. Udgir, District: Latur.
- 1-B. Alimoddin S/o Pashasab Bagwan,
Age: 48 years, Occu.: Agriculturist,
R/o Nalegaon, Tq. Chakur, District: Latur.
- 1-C. Bismillabee W/o Pashasab Bagwan,
Age: 70 years, Occu.: Housewife,

R/o Nalegaon,
Tq. Chakur, District: Latur.

- 1-D. Ayesha W/o Gousoddin Shaikh,
Age: 42 years, Occu.: Housewife,
R/o Pirmusa Nagar, Nanded Road,
Opposite Mukkawar Weighing Machine,
Tq. Udgir, District: Latur.
2. Prakash Nivrutti Pensalwar,
(Died, through Legal Heirs)
- 2-1. Premala W/o Prakash Pensalwar,
Age: 80 years, Occu.: Housewife,
R/o Nalegaon, Tq. Chakur, District: Latur.
3. Balaji S/o Prakash Pensalwar,
Age: 54 years, Occu.: Business,
R/o Nalegaon,
Tq. Chakur, District: Latur.
4. Sham S/o Prakash Pensalwar,
Age: 49 years, Occu.: Business,
R/o Nalegaon,
Tq. Chakur, District: Latur. (Orig. Deft. Nos.2 to 4)
..Respondents

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Mr. P. V. Mandlik, Senior Advocate i/by Mr. P. P. Mandlik,
Advocate for the Appellants.

Mr. V. D. Gunale, Advocate for Respondent No.1B-Caveator.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED 02nd DECEMBER, 2024.

ORDER:-

1. The appellants/original plaintiffs seek to challenge judgment and decree passed by the learned District Judge, Latur dated 10.07.2024 in Regular Civil Appeal No.60/2024 as well as judgment and decree dated 31.12.2007 passed by III Joint Civil Judge Senior Division, Latur in Special Civil Suit No.31/2005. (Hereinafter, parties are referred as per their original status in the suit for the purpose of convenience and brevity).

2. The appellants/original plaintiffs instituted Special Civil Suit No.33/2005 seeking decree for partition and separate possession in the ancestral property i.e. Gut No.720 admeasuring 2H 81R situated at Nalegaon, Tal. Chakur, Dist. Latur. It is their contention that defendant no.2 is their father and defendant nos.3 and 4 are their real brothers. Their father had assured that he shall provide them 1/5th share in the suit property. However, defendant no.2 without legal necessity, alienated the suit land to defendant no.1 vide registered sale deed dated 02.07.1993. The plaintiffs got knowledge of alienation made by their father in the year 2005. Consequently, cause of action arose to file present suit. The suit proceed *ex-parte* against defendants. Consequently, Trial Court decreed the suit by judgment and order dated 31.12.2007 and granted 1/5th share each to plaintiffs in suit property and also declared that sale deed dated 02.07.1993 is not binding upon their rights.

3. The defendants legal representatives of defendant no.1 filed appeal before the District Court contending that sale deed was executed by father of plaintiffs with consent of defendant nos.3 and

4. It was for the legal necessity of the family. It was contended on behalf of defendant no.1 that plaintiffs had no right in suit property at the time of execution of sale deed. Therefore,

subsequent amendment in the Hindu Succession Act would not be applicable in the facts of the present case.

5. The Appellate Court accepted the contentions of legal representatives of defendant no.1 and allowed Appeal by setting aside judgment and decree passed by the Trial Court.

6. Mr. Mandlik, learned Senior Advocate appearing for the appellants would submit that Appellate Court ought to have remanded matter back to the Trial Court. The defendants have not filed any written statement. In absence of pleadings, Appellate Court could not have considered defence of legal representatives of defendant no.1. He would, therefore, urge that several substantial questions of law arises for consideration in this Second Appeal, as has been specified in memo of Second Appeal.

7. Per contra, Mr. Gunale, learned Advocate appearing for the respondent No.1(B)-caveator supports the impugned judgment and order passed by the District Judge.

8. Having considered submissions advanced, the core issue that arises for consideration in this Second Appeal is as to whether plaintiffs had any right to claim partition of the suit property, which was alienated by their father in favour of defendant no.1 vide sale deed dated 02.07.1993.

9. It is not in dispute that suit land was ancestral property. The plaintiffs are daughters of defendant no.2 and sisters of defendant nos.3 and 4. The father of plaintiffs executed registered sale deed dated 02.07.1993 in favour of defendant no.1. The brothers of plaintiffs i.e. defendant nos.3 and 4 were consenting parties/witnesses to the transaction. Therefore, taking into account law as on date of transaction, defendant nos.2 to 4 were coparceners of the suit property. The daughters were not bestowed with any right till such right was created by Maharashtra Amendment in Hindu Succession Act, 1956, which came into force w.e.f. 22.06.1994. Thereafter, such right is bestowed in favour of daughters vide Amendment of 2005 in Section 6 of the Hindu Succession Act w.e.f. 09.09.2005. The amended Section 6(1) of the Hindu Succession Act states as under:

“6 Devolution of interest in coparcenary property.

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 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 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.”

10. The effect of proviso to Sub-section (1) of Section 6 of the Hindu Succession Act clearly protects disposition or alienation of the property that has been taken place before 20th day of December 2004. Therefore, plaintiffs cannot claim any right in the property that was subject matter of sale transaction made by their father on 02.07.1993.

11. Second limb of argument that was advanced before District Court is that suit was barred by limitation. Admittedly, suit property was transferred on 02.07.1993 by father of the plaintiffs with consent of defendant nos.3 and 4. The plaintiffs were aware about the said transaction, but same has been subjected to challenge in the year 2005 seeking declaration that sale deed is illegal or invalid. Such suit would be barred by limitation. In light of aforesaid findings of the fact, no substantial questions of law arises for consideration in this second appeal.

12. Consequently, Second Appeal stands dismissed in limine.

13. In view of dismissal of Second Appeal, Civil Application does not survive and stands disposed of accordingly.

(S. G. CHAPALGAONKAR)
JUDGE