



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 883 OF 2022**

**RAMCHANDRA YADAV RASKAR AND OTHERS  
VERSUS  
CHANDRAKALA RAJENDRA RASKAR  
AND OTHERS.**

...

Mr. V.S. Bedre, Advocate for appellants  
Mr. S.R. Andhale, Advocate for respondent Nos. 1 and 2.

**CORAM :S.G. CHAPALGAONKAR, J.**

**DATE : 13 NOVEMBER, 2024.**

**P.C. :-**

The appellants/original defendants impugn the judgment and decree dated 17.08.2022 passed by learned District Judge, Ahmednagar in R.C.A. No. 42 of 2020 by which suit filed by respondent Nos. 1 and 2 for partition, separate possession and maintenance has been decreed by setting aside the judgment and decree dated 19.1.2020 passed by learned Civil Judge (Senior Division), Ahmednagar in R.C.S. No. 191 of 2014.

2. Mr. Bedre, learned advocate appearing for the appellants submits that respondent Nos. 1 and 2 (original plaintiffs) instituted R.C.,S No. 191 of 2014 seeking relief of partition and separate possession in respect of the suit house alongwith claim for maintenance. The trial court upheld the contention of the appellants/original defendants regarding previous partition between the appellants and defendants Nos.

1 and 2 and dismissed the suit. However, the appellate court reversed the finding recorded by the trial court and decreed the suit; thereby granting 1/5th undivided share in the suit property and also maintenance @ Rs. 5,000/- p.m. collectively, alongwith arrears of Rs. 1,80,000/- towards past three years of maintainance prior to filing of the suit.

3. Mr. Bedre would invite attention of this Court to the cross-examination of respondent No.1, wherein, she admits that she was residing in a room which was given to her in partition. Mr. Bedre would further point out the admission of respondent No.1 that her husband and brothers had individual ration cards and businesses. On the basis of aforesaid admissions, trial court had recorded a finding of previous partition. Mr. Bedre would further urge that the appellate Court granted decree for excessive and exorbitant maintenance in favour of respondent Nos. 1 and 2 in absence of any evidence regarding earning of the appellants out of suit property. According to Mr. Bedre, the appellate court reversed finding recorded by the trial court on erroneous counts. According to him, the right under Section 98 of the Hindu Adoption and Maintenance Act, 1956 can be enforced only against husband and not from the other family members.

4. Per contra, Mr. S.R. Andhale, learned Advocate for respondent Nos. 1 and 2 would submit that deceased Rajendra was husband of respondent No.1 and father of respondent No.2. Appellant No.1 is father, whereas, Appellant Nos. 2,3 and 4 are real brothers of Rajendra. Admittedly, the suit property was jointly owned by Rajendra alongwith appellants. There is no dispute that it was an ancestral property. The appellants took the plea of previous partition of year 2001

during lifetime of Rajendra. However, no positive evidence is brought on record by the appellants to establish the said fact. The stray admission which is inconsistent with the other part of the cross-examination of respondent No.1 cannot be considered as evidence of partition. The appellate Court, on due appreciation of the pleadings and evidence on record passed a decree of partition, separate possession and maintenance in favour of respondent Nos. 1 and 2, who were kept away from their legitimate right after death of Rajendra.

5. Having considered submissions advanced, and after going through reasoning of both the fact finding courts, it can be noted that there is no dispute about the fact that suit houses are part of ancestral property inherited by Ramchandra Raskar. Rajendra - husband of respondent No.1 and original defendant Nos. 2 to 4 are real brothers. Rajendra died leaving behind respondent Nos. 1 and 2. Ramchandra was Karta of joint family property. After death of Rajendra, present suit has been instituted by plaintiffs/respondents i.e. wife and daughter of Rajendra against father and brothers of Rajendra. Pertinently, defendant No. 3C - Akshay, during course of cross-examination admitted that CTS No. 4680 and 4702/3 are ancestral properties of the family. He further admitted that there is no documentary evidence to show alleged partition in the year 2001 between Rajendra and his brothers. In support to plea in written statement, no material is tendered into service to show previous partition as claimed by the defendants.

6. The appellate Court has rightly observed that in absence of concrete evidence as regards to previous partition, the case of the plaintiff regarding joint-ness of the coparcenary property will have to be

accepted. Although, during cross-examination, respondent No.1 admitted that since date of her marriage with Rajendra, all brothers were doing independent businesses or a room allotted to her in the partition. The tenor of the entire evidence clearly shows that she has never accepted the theory of previous partition. Mere independent businesses or separate residences would not constitute evidence of partition. The appellate court has, therefore, rightly concluded that the suit property was joint family property susceptible to partition.

7. So far as second contention as regards to grant of decree of maintenance @ Rs. 5000/- p.m. alongwith arrears of Rs. 180000/-, the appellate court has rightly concluded that suit property is a commercial property which is utilized for tobacco shop and mobile shoppee within the limits of municipal corporation. After death of Rajendra, the plaintiffs i.e. his widow and daughter, were not provided with maintenance; while the appellants were enjoying the joint family property. In that view of the matter, respondent Nos. 1 and 2 are entitled for maintenance from the appellants since they have wrongly withheld legitimate share of respondent Nos. 1 and 2 in the joint family property.

8. In that view of the matter, no substantial question of law is made out in the appeal. Second appeal, sans merit, stands dismissed. Civil application No. 17352 of 2022 stands disposed of.

**[S.G. CHAPALGAONKAR, J]**

grt/-