



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2304 OF 2016
WITH
CIVIL APPLICATION NO. 8515 OF 2016
WITH
CIVIL APPLICATION NO. 13471 OF 2016
IN
FIRST APPEAL NO. 2304 OF 2016
WITH
FIRST APPEAL NO. 2305 OF 2016
WITH
CIVIL APPLICATION NO. 8516 OF 2016
IN
FIRST APPEAL NO. 2305 OF 2016

- * Uttam Bhimashankar Sulakhe (Died Lrs)
1. Smt. Chandrakala Uttam Sulakhe
Age- 70 years, Occu- Nil,
R/o. House No. 291/1m Shivyog,
by the side of Ballaleshwar Ganesh Temple,
Tq. Trimbakeshwar, Dist. Nashik.
 2. Bhausahab Uttam Sulakhe
Age- 46 years, Occu- Agri.,
R/o. As above.
 3. Smt. Shobha Kumar Lohagaonkar,
Age- 44 years, Occu- Household
R/o. House No. 178, Shantaie Niwas,
Behind Ketkimata, Temple, Kushawart
Chowk, Tq. Trimbakeshwar, Dist. Nashik.
 4. Sow. Prabhawati w/o Rangnath Aradhi
Age- 43 years, Occu- Household,
R/o. House No. 189, Shivdarshan Wada,
Behind Ketkimata Temple, Kushawart
Chowk, Trimbakeshwar, Dist. Nashik.
 5. Balasaheb s/o Uttam Sulakhe
Age- 42 years, Occ- Agri & duties of Brahmin,

R/o. House No. 326, Shreya Safalya,
Infront of Jain Temple, Gokuldas Lane,
Tq. Trimbakeshwar, Dist. Nashik.

6. Sunil s/o. Uttam Sulakhe
Age- 36 years, Occ. Duties of Brahmin,
R/o. House No. 219/1, Shivyog,
By side of Ballaleshwar Ganesh Temple,
Tq. Trimbakeshwar, Dist. Nashik

...APPELLANTS

[Ori. Claimants/Party No. 2]

VERSUS

1. The State of Maharashtra
From the Special Land Acquisition Officer
Jayakwadi Project No. 2, Beed.
Tq & Dist. Beed.

* Dinkar Sakharam Sulakhe (Died Lrs)

2. Anil s/o Dinkarrao Sulakhe,
Age- 28 years, Occ- Agri.,
R/o. Fulsangvi, Tq. Shirur Kasar, Dist. Beed,
Now at Trimbakeshwar, Dist. Nashik.

3. Mangalbia w/o Dinkar Sulakhe
Age- Major, Occ- Household,
R/o. As above.

4. Chhaya Raju Kulkarni
Age- 22 years, Occ- Household,
R/o. Taru Pimpalwadi, Tq. Paithan,
Dist. Aurangabad.

5. Sanjay Dinkar Sulakhe
Age- 50 years, Occ- Agri.,
R/o. Fulsangvi, Tq. Shirur Kasar,
Dist. Beed.

6. Madhukar Sakharam Sulakhe
Age- 50 years, Occ- Agri.,
R/o. At Present, Panch Aali Trimbakeshwar,
Dist. Nashik.

...RESPONDENTS

[Orig. Party No. 1]

Mr. P.V. Mandlik, Senior Advocate i/b. Mr. Pratap P. Mandlik,
Advocate for appellants
Mr. Vilas P. Savant, Advocate for respondents No. 2 to 5
Mr. B.B. Bhise, AGP for State

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON: 18th JULY, 2024
PRONOUNCED ON: 22nd AUGUST, 2024

JUDGMENT:

1. Both these appeals filed by appellants/original claimants/Party No. 1 challenge common judgment and award dated 16.04.2016 passed by learned District Judge-2, Beed, in Land Acquisition Reference Nos. 60 of 2007 and 61 of 2007.

2. For the sake of convenience, appellants are referred to as Party No. 2 and respondents No. 2 to 6 are referred to as Party No. 1, as are referred in the references.

3. House Nos. 31/52 and 139/55 and portion of land from Gut Nos. 65, 66, 69 and 71 of village Fulsangvi, Taluka-Shirur Kasar was acquired for Fulsangvi Storage Tank, Old Gaothan from Fulsangvi, Taluka- Shirur Kasar, Dist. Beed, in which both the parties had their share. Towards acquisition of house property compensation of Rs. 5,25,582/- and for land compensation of Rs. 2,16,000/-was determined by the Special Land Acquisition Officer (for short "SLAO").

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Dinkar Sakharam Sulakhe (Party No. 1) filed Writ Petition No. 8201/2016 and Civil Application No. 1761/2007. This Court passed order on civil application on 10.04.2007 and directed the matter to be referred to the Civil Court under section 30 of the L.A. Act, for apportionment of share of parties in respect of compensation awarded in land acquisition proceedings. Accordingly, Land Acquisition Reference No. 60/2007 was registered in respect of house property and Land Acquisition Reference No. 61/2007 was registered in respect of agricultural lands.

4. Party No. 1 and Party No. 2 filed their respective claims. Both the parties filed joint purshis stating that since both the references arise from same proceeding and they are between same parties, therefore, both references be kept together for the purpose of inquiry and recording of evidence. Accordingly, both references were clubbed together and evidence is recorded in Land Acquisition Reference No. 60/2007 by treating it as main reference.

5. Dinkar and Madhukar of Party No. 1 claimed that they are entitled for 1/3rd share each from the amount of compensation awarded by SLAO. Since, SLAO did not make

apportionment as claimed by them, Party No. 1 therefore filed writ petition, in which direction was given to register land acquisition references to get apportionment done. Party No. 1 claimed that they are entitled for 1/3rd share in the compensation amount on the ground that original owner Narhar was having two sons Bhimashankar and Sakharam. Therefore, they both had 1/2 share each (8 annas) in the property. Sakahram left behind his legal heirs Ganpat, Uttam, Dinkar, Madhukar and Sulochana. Ganpat died issue less leaving behind his wife Kamalbai, who has also died. Therefore, at the relevant time, Uttam, Dinkar and Madhukar were holding 1/3rd share each in the acquired lands. As per apportionment of share claimed by Party No. 1, entries were taken in the 7/12 extract, but Party No. 2 Uttam contended that he was adopted by Bhimshankar and being his legitimate adopted son, he is entitled for 1/2 share (8 annas) in the amount of compensation. It is further claimed that deceased Kamalbai had filed Regular Civil Suit No. 28/1991 for partition in the Court of learned Civil Judge, Senior Division, Beed, which was pending from the year 1991 to 2000. Subsequently, it was transferred to learned Civil Judge, Junior Division, Georai and renumbered as Regular Civil Suit No. 308/2000. On death of Kamalbai on 22.02.2001 the suit abated.

Party No. 2 Uttam has no right to revive the suit since it is abated. The objection taken by Party No. 2 is only with a view to delay payment of amount of compensation to Party No. 1. The claim of Party No. 2 is liable to be rejected and it is required to be held that Party No. 2 has failed to prove that he is adopted son of Bhimashankar and 1/3rd share in the amount of compensation be allotted to Party No. 1.

6. On the other hand, Party No. 2 contended that he being adopted son of Bhimashankar is entitled for one half share in the amount of compensation. Late Bhimashankar adopted him as per adoption deed dated 01.06.1957, being son of his brother Sakharam. Therefore, Party No. 2 Uttam and Shashikalabai are respective son and daughter of late Bhimashankar Sulakhe. As per registered sale deed, Shashikalabai sold her share to Party No. 2 Uttam and accordingly their names have been mutated as legal heirs vide mutation entry No. 55 dated 13.02.1961 and mutation entry No. 77 dated 08.06.1965. Therefore, Party No. 2 claimed that he is owner of one half share amongst themselves.

In respect of mutation entries and entries in the revenue record, Party No. 2 contended that Party No. 1 Madhukar and deceased Dinkar had made mutation entry No. 4

dated 22.12.1981 on the basis of alleged oral partition, behind his back, in collusion with revenue authorities and shown respective 1/3rd share and got the *Mahasul Patrak* and 7/12 extract prepared. Party No. 2 filed appeal against said entry bearing Appeal No. 2006/ROR/121. Sub Divisional Officer has canceled the said mutation entry and by order dated 31.05.2007 mutation entry No. 1247 has been sanctioned. Therefore, by relying on the adoption deed Party No. 2 claimed half share in the amount of compensation.

7. Reference Court after going through pleadings of the parties framed issue i.e. "*Does claimant No. 3 Uttam prove that he has half share in the amount of award passed in the land acquisition proceeding by the Land Acquisition Officer?*" The same is answered in negative and objections taken by Party No. 2 Uttam were turned down. Apportionment amount of compensation to the extent of 1/3rd share each to Madhukar, Dinkar and Uttam by SLAO is held proper and same was confirmed. Being aggrieved by the same, Party No. 2 has filed these appeals.

8. Heard learned Senior Advocate for Party No. 2, learned advocate for Party No. 1 and learned AGP for State.

9. Learned Senior Advocate would submit that in the Reference Court application Exhibit-47-D was filed by Party No. 2 contending that in partition suit bearing Special Civil Suit No. 28/1991 filed by Kamalbai w/o Ganpat vs. Uttam and others, partition as well as adoption is admitted and proved in the evidence led by the parties. Since, Uttam is in advance age, deaf and dumb and not in a position to hear anything, certified copies of evidence recorded in the said suit may be treated and read as evidence in the references. Said application was allowed by order dated 29.09.2014 and statements recorded in earlier suit and documents from the said suit produced by Party No. 2 were permitted to be read as evidence. He therefore submits that Party No. 2 has proved the factum of partition and adoption, on the basis of the depositions and documents and it is not necessary for him to lead any evidence in support of his claim. This aspect is ignored by the Reference Court while rejecting the claim of Party No. 2. Reference Court erred in holding that Party No. 2 has failed to prove the adoption deed and that he has ½ share in the compensation amount. He further submitted that voluminous documents in the form of revenue record are submitted by Party No. 2 to prove his claim. However, these documents are ignored by Reference Court. Further submission

is that even Party No. 1 did not lead their evidence, but examined GPA Seela w/o Dinkar Sulakhe. However, as per ratio in Janki vs. Indusind Bank Limited, AIR 2005 SC 439, power of attorney holder cannot depose in the place of principal and therefore her evidence is inconsequential. She was not having any knowledge about adoption and equal partition between two brothers i.e. Bhimashankar and Sakharam. Considering the documents placed on record and depositions recorded in Special Civil Suit No. 28/1991, which were to be read in the evidence in the references, Party No. 2 Uttam is entitled for half share. He therefore submits that first appeals may be allowed and it be held that Party No. 2 Uttam and his dependents are entitled for half share in the compensation amount.

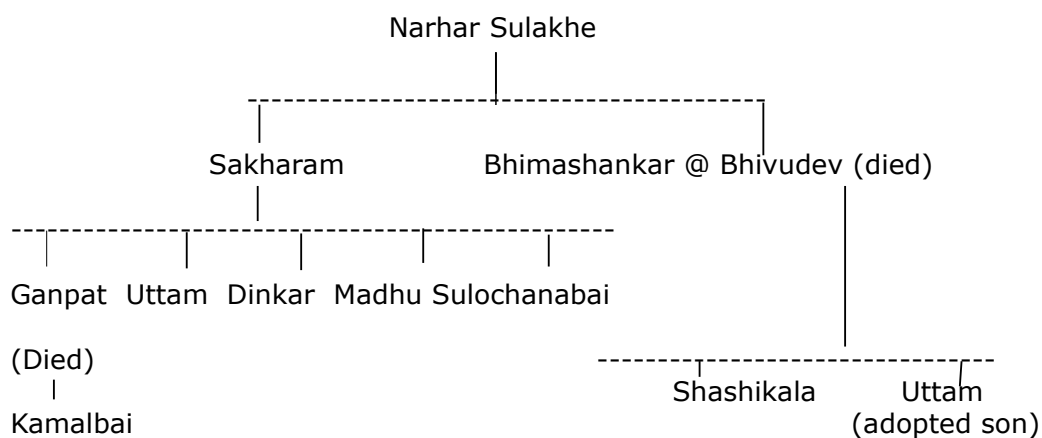
10. Per contra, learned advocate for Party No. 1 supported the impugned common judgment and award passed by the Reference Court. He strenuously submitted that Party No. 2 has miserably failed to prove the alleged adoption. According to him, the alleged adoption deed dated 01.06.1957 is not registered deed and the alleged sale deed executed in favour of Party No. 2 Uttam by Shashikalabai is dated 11.10.1962, wherein age of Uttam is shown as 26 years. Therefore, it is clear

that Uttam was of 21 years at the time of alleged adoption on 01.06.1957. As per Section 10 of Hindu Adoptions and Maintenance Act, 1956, a person below the age of 15 years has to be adopted unless there is a custom or usage applicable to the parties which permits adoption of persons, who have completed 15 years of age. He further submitted that entries in the record of rights and mutation entries did not confer title. He submitted that proceeding under section 30 of the L.A. Act is summary proceeding, in spite of that opportunity was given to the parties to lead evidence and thereafter only the judgment is passed. He submitted that concurrent finding of facts recorded by SLAO and Reference Court are not liable to be interfered with in the facts of the present case. There is no merit in the first appeals and same may be dismissed.

11. Heard learned Senior Advocate for Party No. 2, learned advocate for Party No. 1 and learned AGP for State at length. Perused the record.

12. For better understanding of pleadings of the parties and their respective claims and to decide issue regarding apportionment of respective shares, Reference Court has given family tree of original owner of the property namely Narhar

Sulakhe, as follows:



13. Since, Party No. 2 claimed that he was adopted son of Bhimashankar and he has $\frac{1}{2}$ share in the compensation amount, burden was on him to prove the factum of adoption and that he had $\frac{1}{2}$ share in the compensation amount. Party No. 2 has placed reliance on the order passed below Exhibit-47 by which according to him documents sought to be produced by him from the previous suit were permitted to be read as evidence in the reference.

14. Application Exhibit-47 is allowed by the Reference Court by following order:

ORDER

- 1) *Application Exh. 47 is allowed.*
- 2) *Documents sought to be produced along with Exhs. 34 and 35 are permitted to be read as evidence in this case.*

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- 3) *It shall be open for both the parties to argue as to how the said documents should be appreciated by this Court at the stage of final hearing.*

15. Clause 3 of the operative order quoted above clearly keeps the question of admissibility and proof of documents filed along with Exhibits-34 and 35 open, to be decided at the stage of final hearing.

16. Along with Exhibit-34 and 35 Party No. 2 has placed on record deposition of Uttam recorded in Special Civil Suit No. 28/1991, adoption deed (Exhibit-128), mutation/ revenue entries claimed to have been taken pursuant to the adoption deed and sale deed executed by Shashikalabai in favour of Uttam.

17. Admittedly, Special Civil Suit No. 28/1991 was filed by Kamalbai Sulakhe against Party No. 1 and 2 for partition and separate possession of the ancestral property. In that suit, deposition of Uttam (Party No. 2), Uttam Patwari, a witness to the adoption deed, Dinkar Sulakhe (Party No. 1) were recorded. In the said suit, issues were framed by Trial Court and issue No. 2 and 8 were as follows:

- 2) *Whether plaintiff proves that defendant No. 1 is an adopted son of deceased Bhimashankar?*

3)

8) *Whether defendant No. 1 proves that he is entitled to half share in the suit properties except suit Gut No. 32?*

18. Indisputably, said suit abated on the death of Kamalbai on 22.02.2001. Hence, no decision on merit is rendered in the said suit.

19. Section 33 of Indian Evidence Act provides for relevancy of certain evidence for proving in subsequent proceeding, the truth of facts therein stated, which needs to be considered for appreciating submission of learned Senior Advocate for Party No. 2 that evidence recorded in Special Civil Suit No. 28/1991 and documents from that suit i.e. adoption deed, mutation/revenue entries and sale deed executed by Shashikalabai in favour of Uttam are sufficient to prove adoption of Uttam by Bhimashankar and hence he is entitled for ½ share in the compensation amount.

Section 33 of Indian Evidence Act, reads thus:

"33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.- Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead, or cannot be

found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case, the Court considers unreasonable

Provided-

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.”

20. From plain reading of Section 33 of Indian Evidence Act it is clear that evidence given by a witness in a judicial proceeding, is relevant for the purpose of proving, in a subsequent judicial proceeding, the truth of the facts which it states, when the witness is incapable of giving evidence. However, Section 33 does not dispense with proof of evidence given by a witness in a judicial proceeding. It is well settled that mere admission of document in evidence does not amount to its proof. Therefore, documentary evidence is required to be proved in accordance with law. [Vide *H. Siddiqui (Dead) by L.Rs. Vs. A. Ramalingam*, AIR 2011 SC 1492].

21. In this case, Party No. 2 has miserably failed to prove his claim that he is adopted son of Bhimashankar. It is well settled that strict proof is necessary for proving adoption, fact of

adoption has to be proved including essential ceremony of adoption. There appears substance in the contention of Party No. 1 that in view of Section 10 of Hindu Adoptions and Maintenance Act, a person who is under 15 years of age may be adopted. Party No. 2 claimed that alleged adoption has taken place on 01.06.1957, whereas sale deed executed by Shashikalabai in favour of Party No. 2 is dated 11.10.1962, wherein the age of Party No. 2 is shown as 26 years. Thus, Party No. 2 was of 21 years of age at the time of alleged adoption, which is contrary to section 10 of Hindu Adoptions and Maintenance Act.

22. Party No. 2 has failed to prove factum of adoption by leading evidence and therefore has failed to discharge burden on him. Reference Court is justified in recording a finding that *"mere existence of adoption deed itself would not prove the fact of adoption. The fact of adoption is required to be proved."*

23. Inquiry under section 30 of the L.A. Act is a summary proceeding, however, Reference Court had given opportunity to both the parties to lead their respective evidence. Except producing documents in the form of depositions recorded in the previous suit, which was not decided on merits, adoption deed, revenue/mutation entries and sale deed executed by

Shashikalabai in favour of Uttam, Party No. 2 has not led any evidence to prove factum of adoption and partition and failed to discharge burden on him to prove that he was adopted son of Bhimashankar and hence was entitled for ½ share in the compensation amount. Legal position is settled that mutation/revenue entries do not confer title on a party. Hence, mutation/revenue entries relied upon by Party No. 2 do not further his case.

24. Reference Court has properly appreciated the evidence on record and has rightly reached to a conclusion that *"party No. 2 has failed to discharge the burden in the proceeding that Uttam being an adopted son of Bhimashankar, is entitled to one half share in the amount of compensation."*

25. Reference Court has given proper reasons while rejecting the claim of Party No. 2. No jurisdictional error or error of law is committed by the Reference Court while passing the impugned judgment and award. First Appeals being devoid of merit are dismissed.

26. In view of disposal of first appeals, pending civil applications are disposed of.

[NITIN B. SURYAWANSHI, J.]