



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 500 OF 2023

WITH CIVIL APPLICATION NO. 11988 OF 2023

IN SECOND APPEAL NO. 500 OF 2023

Bibhishan s/o Dagdu Gawali

Appellant

Versus

1. Dattatraya Popat Gaikwad
2. Sanjay Dagdu Gawali
3. Padmin w/o Arun Shinde
4. Rajabai w/o Shahaji Shinde
5. Kamal w/o Bandu Kamune (Parit)

Respondents

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Mr. S.Y. Mahajan, Advocate for the appellant.

Mr. Mukul S. Kulkarni, Advocate holding for Mr. K.R. Doke,
Advocate for respondent No.1.

...

WITH

SECOND APPEAL NO. 596 OF 2023

1. Sugriv Dagdu Gawali
2. Padmin w/o Arun Shinde
3. Rajabai w/o Shahaji Shinde
4. Kamal w/o Bandu Kamune (Parit)

Appellants

Verus

1. Dattatraya Popat Gaikwad
2. Bhibhishan Dagdu Gawali

Respondents

...

Mr. V.V. Bhavthankar Advocate for the appellants.

Mr. Mukul S. Kulkarni, Advocate holding for Mr. K.R. Doke,
Advocate for respondent No.1.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 21 JUNE 2024.

ORDER :

1. Both these appeals are directed against common judgment and decree dated 11.09.2023 passed by the learned District Judge-1, Paranda, District Osmanabad (hereinafter referred to as “the learned first appellate Court”) in Regular Civil Appeal No. 71/2023 (old R.C.A. No. 29/2018 (Bhoom) and Regular Civil Appeal No. 72/2023 (old R.C.A. No.30/2018 (Bhoom)). Under the aforesaid judgment and decree, the learned first appellate Court has confirmed the judgment and decree dated 16.04.2018 passed by the learned Civil Judge (Junior Division), Paranda i.e. the learned trial Court.

2. The record shows that present respondent No.1, who is the original plaintiff, has filed R.C.S. No. 241/2012 against appellant No.1 in Second Appeal No. 500 of 2023 i.e. original defendant No.1 and the appellants in Second Appeal No. 596 of 2023 i.e. original defendant Nos.2 to 5, for declaration of his ownership as well as possession of suit property Gut No. 146 admeasuring 1 H 82 R at Mauje Takali, Taluka Paranda, District Osmanabad being the only surviving legal representative of Hausabai Parit. The pleadings by both parties indicate that one Krishna Parit was the common

ancestor who was having two sons namely Balbhim and Shrirang. Balbhim was having one son Dagdu through his wife Sarubai, whereas Shrirang was having Hausabai as wife and they were having one daughter Arunawati. In the year 1947-48 Balbhim, Shrirang and Sarubai died on same day due to Plague. Dagdu was minor at that time and he was maintained by Hausabai. According to respondent No.1/plaintiff, there was partition between Balbhim and Shrirang in respect of joint family property bearing Survey Nos.41/1 and 41/2 and suit property Gut No.146 comprising old Survey No.41/2 came to the share of Hausabai whereas Gut No.147 comprising old Survey No.41/1 went to the share of Dagdu. As such, respondent No.1 Dattatray filed the aforesaid suit by claiming through Hausabai, being her grand son.

3. It further appears that the present appellant, who is the son of Dagdu, contested the suit on the ground that in the year 1948 Hausabai was having only limited share of maintenance in the suit property, but in fact all the properties inherited by Balbhim and Shrirang devolved upon him being the sole coparcener and thus he denied the claim of ownership of original plaintiff Dattatray over the suit property.

4. Learned trial Judge decreed the suit by declaring the present respondent No.1 Dattatray i.e. original plaintiff as owner of the suit property and also directed the appellant Bibhishan as well as respondent Nos.2 to 5 to deliver possession of the suit property to Dattatray. Feeling aggrieved with the said judgment and decree of the learned trial Court, the original defendant No.1 as well as original defendant Nos.2 to 5 filed two separate appeals bearing R.C.A. No.71/2023 and R.C.A. No. 72/2023 respectively. But the learned first appellate Court, vide common judgment and decree dated 11.09.2023, dismissed the same by confirming the decree of learned trial Court. Hence, these Second Appeals.

5. Learned Counsel for the appellant/defendant No.1 vehemently argued that both the learned Courts below have not appreciated evidence properly. According to him, both the learned Courts below wrongly held that plaintiff Dattatray proved the fact that he was son of Arunawati i.e. pre-deceased daughter of Hausabai. He further pointed that both the learned Courts below erroneously held that the suit property came to the share of Hausabai due to partition between two sons of Krishna namely Balbhim and Shrirang. According to

him, there was no such partition and there was no pleading to that effect. According to him, following substantial questions of law are involved.

- (i) Both the learned Courts below wrongly held that there was partition between Balbhim and Shrirang, and therefore, Hausabai became owner of the suit property.
- (ii) The finding of both the Courts below that plaintiff Dattatray is son of Arunawati i.e. pre-deceased daughter of Hausabai is without any reliable evidence.
- (iii) Whether Hausabai was having any right in the suit property in the year 1948 i.e. before commencement of Hindu Succession Act?

6. On the contrary, learned Counsel for respondent No.1 strongly opposed the submissions made on behalf of the appellant/defendant No.1. According to him, Dagdu i.e. father of appellant Bibhishan himself had filed application for recording his name in the suit property and other property by admitting right of Hausabai. According to him, there were two separate shares in the joint family property of Balbhim and Shrirang in the year 1948. Gut No. 146 i.e. suit property went to Hausabai and Gut No. 147 to Dagdu as per partition between Balbhim and Shrirang. He further pointed out that

even if it is presumed that there was no partition between Balbhim and Shrirang, then also Hausabai, who was having limited right of maintenance in the suit property in the year 1948, was admittedly in possession of the same on the commencement of Hindu Law in the year 1956, and therefore, she became full owner of the suit property by virtue of Section 14 of Hindu Succession Act. He pointed out that both the learned Courts below have considered this aspect in proper perspective. Further, according to him, respondent No.1 Dattatray i.e. the original plaintiff has adduced sufficient evidence of close relatives of Hausabai alongwith documentary evidence in form of his School Leaving Certificate indicative of the fact that he is son of Arunawati, the pre-deceased daughter of Hausabai. As such, he prayed for dismissal of the Second Appeals being devoid of merit. He relied on the following judgments :

- (i) L.N. Aswathama vs V.P. Prakash, 2009 AIR SCW 5439***
- (ii) Uttam Chand Vs Nathu Ram, AIR Online 2020 SC 849***
- (iii) Dr. Mahesh Chand Sharma vs Smt. Rajkumari, AIR 1996 SC 869***
- (iv) Jagannath Waman Undre vs Smt Yamunabai Sitaram Kadam, AIR 2019 Bombay 143***
- (v) Saroop Singh vs Banto, AIR 2005 SC 4407***
- (vi) Gurnam Singh vs Lehna Singh, (2019) 7 SCC 641***

(vii) Narayan Rajendra and anotehr vs Lekshmy Sarojini and others, (2009) 5 SCC 264

(viii) Munni Devi Alias Nathi Devi vs Rajendra Alias Lallu Lal 2022 LiveLaw (SC) 515

(ix) Civil Appeal No.4322-4324 of 2024 (Arising out of SLP (C) No.19059-19061 of 2014 (M.Radheshyamlal vs V. Sandhya and another)

7. So far as the first and third substantial questions of law are concerned, it is claimed by the appellant that both the learned Courts below wrongly observed that there was partition between two sons of Krishna namely Balbhim and Shrirang i.e. husband of Hausabai and Hausabai was not having any right in the suit property in the year 1948 i.e. before commencement of Hindu Succession Act. According to him, there was no pleading at all in respect of partition between Balbhim and Shrirang. However, since beginning or since 1948 two separate shares are shown in Hindu joint family of Balbhim and Shrirang namely the present suit property and Gut No.147. It is significant to note that since beginning Gut No.147 is shown in the name of Dagdu i.e. father of appellant Bibhishan and Gut No.146 was shown in the name of Hausabai. Relationship between the parties and the genealogy brought on record is not at all disputed. Moreover, it is also not disputed that Hausabai was having

only daughter by name Arunawati. As such, relationship amongst Balbhim, Shrirang, Dagdu and Arunawati at least is not in dispute. The defendants have only disputed the relationship between Arunawati and respondent No.1/plaintiff Dattatray. Further, the learned first appellate Court has clarified the legal position by observing that even if it was presumed that there was no partition between Balbhim and Shrirang, then also Hausabai was having limited right of maintenance in the suit property till her death and when Dagdu was minor, she was admittedly in possession of the same on the commencement of Hindu Law in the year 1956. Learned first appellate Court has observed that on commencement of Hindu Law in the year 1956, the limited right of Hausabai in the suit property got converted into full right and she became absolute owner by virtue of Section 14 of the Hindu Succession Act. From the plain reading of said Section 14 of Hindu Succession Act, it is clearly evident that Hausabai became full owner of the suit property as she was possessing the same at the relevant time. As such, even on that count also right of Hausabai as full owner, cannot be denied.

8. So far as the second substantial question of law is

concerned, the defendants have denied the fact that plaintiff Dattatray is the son of Arunawati i.e. pre-deceased daughter of Hausabai. However, it is significant to note that defendant Nos.2 to 5 have admitted the fact that Hausabai was having one daughter by name Arunawati Popat Gaikwad. As such, it can safely be inferred that relationship between Hausabai and Arunawati Popat Gaikwad is not in dispute. Further, to prove the relationship between himself and Arunawati, the plaintiff Dattatray has examined himself on oath. He has also examined one Bapu Parit i.e. the son of his aunt Krishnabai, who is real sister of Hausabai. Moreover, he also examined his said aunt Krishnabai. All these witnesses have stated that plaintiff Dattatray is the son of Arunawati and grand son of Hausabai. Even in the cross-examination of all these witnesses nothing adverse to their such contention has brought on record by the side of defendants. It is to be noted that these witnesses are close relatives of Hausabai, and therefore, must be knowing each and every relationship of Hausabai. Not only this, but the plaintiff Dattatray has also examined Headmaster of his School who produced School Admission Extract at Exh.52 and stated that it's contents were as per original register brought by him. It is to be noted that in that School Admission Extract (Exh.52) the name of

respondent No.1/plaintiff is shown as “Dattatray Popat Gaikwad” and his birth date is also mentioned as “10.08.1969” by showing his birth place at Takali. Defendant Nos.2 to 5 have not disputed relationship between Arunawati and Popat Gaikwad since they admitted Arunawati Popat Gaikwad being daughter of Hausabai. Therefore, considering the full name of respondent No.1/plaintiff, it can safely be inferred that the plaintiff Dattatray must be the son of Arunawati and Popat Gaikwad

9. It is extremely important to note that in civil matters no strict proof, as required in criminal matters, is expected. Only preponderance of probability would suffice the purpose to draw certain inference in civil matters. Therefore, considering evidence of close relatives of Hausabai supported by documentary evidence in form of School Admission Extract of the plaintiff, an inevitable inference that the plaintiff Dattatray is the son of Arunawati and Popat Gaikwad and consequently grand son of Hausabai, needs to be drawn. Both the learned Courts below, by relying upon the aforesaid evidence, have drawn same inference. On the contrary, there is no otherwise evidence brought by the side of defendants which would probably show that the plaintiff

Dattatray is the son of someone else other than Arunawati and Popat Gaikwad. Therefore, no perversity is found in such findings.

10. Thus, considering the aforesaid facts, it is evident that both the learned Courts below have taken into consideration the pleadings and evidence on record in proper perspective for holding Dattatrayi.e. original plaintiff and respondent No.1 herein as owner of the suit property through Hausabai. Such observation of both the learned Courts below is based on documentary evidence as well as proper inference, and therefore, no such substantial questions of law appear to be involved in the instant matter. As such, both the Second Appeals stand dismissed at admission stage with pending Civil Application No.11988 of 2023 and the interim relief granted in favour of appellant in Second Appeal No.500 of 2023, stands vacated.

(SANDIPKUMAR C. MORE, J.)

11. After pronouncement of order, learned Counsel for the appellants in Second Appeal No. 500 of 2023 requested to continue the interim arrangement made during the pendency of appeal by way of order in Civil Application No. 11988 of

2023, at least for six weeks. Learned Counsel for respondent No.1 strongly opposed for the same, since the Second Appeal has been dismissed by considering the merit. However, since the said arrangement was in force during the pendency of Second Appeal, it stands continued further for a period of four weeks.

(SANDIPKUMAR C. MORE, J.)