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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 471 OF 2022

WITH

INTERIM APPLICATION NO. 3758 OF 2022

IN

SECOND APPEAL NO. 471 OF 2022

Vasant Pandurang Kachare
(Since Decd. Thr. LRs) Sushila
Vasant Kachare and ors

.....Appellants

Vs.

Yamunabai Waman Pandekar
(Since Decd. Thr. LRs) Ramesh
Waman Pandekar and Ors

.....Respondents

Mr. Dilip Bodake Advocate for the Appellants
Mr. Rajaram V. Bansode Advocate for the respondents

CORAM : GAURI GODSE, J.

DATE : 21st OCTOBER 2024

ORDER:

1. Heard learned counsels for the parties. This second appeal is preferred by original defendant nos. 1 and 2 challenging the concurrent judgments and decrees granting a separate share in a suit for partition and separate possession filed by plaintiff-respondent no. 1.

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2. Learned counsel for the appellants submits that there was a relinquishment deed in the form of memorandum of partition produced on record which indicates that the plaintiff had relinquished her share. He submits that both the Courts erroneously refused to accept the said relinquishment on the ground that it required a compulsory registration. He submits that since the document produced on record to show relinquishment was only a memorandum of partition whereby the plaintiff had relinquished her share, same does not require any registration.

3. Learned counsel for the appellants further submits that in the suit, plaintiff had prayed for partition and separate possession in respect of the properties mentioned at serial nos. 2 to 7 in plaint paragraph 1(a). He submits that the property mentioned at serial no. 1 i.e. Gat no. 80-B was exclusively claimed by the plaintiff by relying upon the gift deed executed by Shripati i.e. grandfather of the parties. He submits that though both the Courts refused to accept the gift deed as a valid gift deed, she never prayed for partition and separate possession in respect of the said property.

4. Learned counsel for the appellants further submits that in view of

the existing Hindu Succession Act, 1956 at the relevant time, the plaintiff would not be entitled to claim share, but she would be entitled to a share in her father's share. To support his submissions, learned counsel relied upon paragraph no. 137.4 of the decision of the Apex Court in the case of *Vineeta Sharma Vs. Rakesh Sharma and others*¹. Learned counsel for the appellants thus submits that the aforesaid grounds raised on behalf of the appellants raise substantial questions of law, required to be considered by this Court.

5. I have perused the impugned judgments as well as the pleadings. The reliance placed by defendant nos. 1 and 2 to claim that plaintiff has relinquished her share would be governed under clause (b) of sub-section (1) of Section 17 of the Registration Act, 1908. It is well settled that a document by which a party would limit or extinguished the right in an immovable property is required to be compulsorily registered under Section 17 of the Registration Act. Both the Courts have concurrently held that the document relied upon defendant nos. 1 and 2 cannot be accepted as a valid relinquishment, for want of registration. I do not find any illegality or perversity in the reasons recorded by both the Courts for not accepting the document

¹ (2020) 9 Supreme Court Cases 1

relied upon defendant nos. 1 and 2 as a valid document of relinquishment.

6. The point raised regarding the plaintiff not making a prayer for partition and separate possession in respect of the property described at serial no. 1 of plaint of paragraph 1(a) is concerned, the same is not included in the prayer for partition and separate possession as the plaintiff claimed her title on the said property by relying upon a gift deed. It is not in dispute that the gift deed is not accepted in favour of the plaintiff. Thus, both the Courts have granted the plaintiff a share in the said property. Thus, granting share in the said property would amount to granting lesser relief than claimed by the plaintiff. The relief for partition and separate possession in respect of the property, subject matter of the gift deed cannot be said to be a relief granted beyond the prayers made by the plaintiff. Hence, I do not see any substance in the arguments raised on the point of the said property not included in the prayer for partition and separate possession.

7. Regarding the arguments raised on determination of shares is concerned, a decree for partition and separate possession is passed by relying upon the legal principles settled by the Apex Court in the

case of ***Vineeta Sharma***. Both the Courts have referred to the position of Section 6 of the Hindu Succession Act and the well settled legal principles by the Apex Court in the case of ***Vineeta Sharma*** and accordingly granted 1/4th share to the plaintiff. The relations between the parties is not in dispute. The first Appellate Court has in detail considered the determination of shares by referring to the entitlement of the parties and thereafter relied upon the decision in the case of ***Vineeta Sharma*** and thus concluded that in view of the legal principles settled in the case of ***Vineeta Sharma***, the plaintiff would be entitled to 1/4th share. The interpretation of Section 6 of the Hindu Succession Act and the determination of the shares on the death of a male Hindu is well settled by the Hon'ble Apex Court in the decision of ***Vineeta Sharma***. I do not see any illegality or perversity in the reasons recorded by both the Courts by relying upon the well settled legal principles for determination of the shares in a suit for partition and separate possession. Hence, there is no substance in the grounds raised on determination of shares. Thus, in view of the well settled legal principles, none of the grounds raised on behalf of the appellants would require any consideration by this court.

8. Second appeal does not raise any question of law. Hence,

second appeal is dismissed. In view of dismissal of second appeal Interim Application No. 3758 of 2022 is disposed of as infructuous.

9. At this stage, learned counsel for the appellants submits that respondent nos. 1A to 1D had filed an affidavit in this Court stating that they are relinquishing their rights to the extent of 6R land in Gat No. 80 – B. He submits that it can be clarified that the partition would not be applicable so far as Gat No. 80 – B is concerned.

10. Learned counsel for respondent nos. 1A to 1D submits that though the said affidavit was filed, it was never accepted by the Court or even the appellants. He submits that the said relinquishment has to be read along with the contents of paragraph no. 4 of the affidavit which clearly indicates that the said relinquishment was subject to acceptance of the decree for partition and separate possession. He submits that though the said affidavit was filed, the appellants insisted for arguing the second appeal on merits. He submits that if the contents in prayer clause 4 were not accepted, the relinquishment referred to in paragraph 3 cannot be read in isolation which would deprive the said respondents from seeking partition and separate possession as granted by the concurrent judgments and decrees. I

find substance in the arguments raised on behalf of respondent nos. 1A to 1D. The contents of paragraph 3 of the affidavit cannot be read independent of the contents in paragraph no. 4 of the affidavit. It appears that on a condition for confirmation of the impugned judgments and decrees with regard to rest of the said properties, the statement regarding relinquishment was made in paragraph no. 3. The contents of paragraph 4 are very clear where respondent nos. 1A to 1D requested for modification of the decree by confirming the impugned judgments and decrees by excluding Gat No. 80 – B.

11. The contents of the said affidavit are never acted upon. Now the second appeal is heard on merits and the impugned judgments and decrees are confirmed. Hence, in view of the conditional statements made in the affidavit regarding relinquishment, the plaintiffs cannot be deprived of the decree for partition and separate possession concurrently passed by both the courts and confirmed by this Court.

[GAURI GODSE, J.]