

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.49 OF 2022
WITH
INTERIM APPLICATION NO.393 OF 2022
IN
SECOND APPEAL NO.49 OF 2022

Kashibai Appa Dhangar
alias Dudhale & Ors.

....Appellants/Applicants

V/S

Khelaba Appa Dhangar
alias Dudhale & Ors.

....Respondents

...

Mr. Prasad P. Kulkarni for the Appellants/Applicants.

...

CORAM: SANDEEP V. MARNE, J.
DATE : JANUARY 16, 2024.

P.C.:

1 This Appeal is filed challenging the judgment and order dated 9 March 2020 passed by the District Court, Solapur partly allowing Regular Civil Appeal No.200 of 2014 and thereby confirming the decree of the Trial Court dated 7 May 2014 passed in Regular Civil Suit No.840 of 2012 to the extent of holding that Plaintiff is entitled to decree of partition and also to the extent exclusion of agricultural land bearing Gat No.877/2 at Kurul, Taluka Mohol, District Solapur from partition.

2 I have heard Mr. Kulkarni, the learned Counsel appearing for the Appellants/Defendants.

3 The main thrust of the submissions of Mr. Kulkarni is that the agricultural land bearing Gat No.877/2 at Kurul, Taluka Mohol, District Solapur is purchased by Plaintiff out of the joint family income and that therefore the said property ought to have been included in the partition decree. He would submit that the Plaintiff admitted in his cross-examination that except the suit properties there was no other source for income for the joint family. According to Mr. Kulkarni since the Plaintiff admitted that he did not have independent source of income, the Defendants/Appellants discharged the burden of proving that the property was acquired through joint family income. He would submit that it was incumbent on the Plaintiff to produce some evidence of independent income, out of which the property at Kurul could have been purchased by him. He would therefore submit that substantial question of law about non-inclusion of property at Kurul in the suit for partition is involved in the present Appeal.

4 After having considered the submissions canvassed by Mr. Kulkarni, it is seen that the Plaintiff (Khelaba) is son of Appa Vithoba Dhangar through his marriage with Sakhubai, who was first wife of Appa Vithoba Dhangar. It appears that Appa Vithoba Dhangar also solemnized marriage with Kashibai, who alongwith her children are Defendant

Nos.2, 3, 4, 7, 8 and 9 in the suit. Plaintiff Khelaba's sisters Kasturibai and Shevanta were also included as Defendant Nos.5 and 6 to the suit for partition. In the suit, it was Plaintiff contended that he has a share in the suit properties at village Padsali and village Kalman. The suit properties are described in paragraphs 1A to 1C of the Plaint. When the Defendant Nos.2, 3, 4, 7, 8 and 9 (contesting Defendants) appeared in the suit, in addition to defending the suit for partition on merits, they also raised the plea that in addition to the three properties, the agricultural land bearing Gat No.877/2 at Kurul, Taluka Mohol, District Solapur was also joint family property, which ought to have been included in the list of the suit properties. It was contesting Defendants' claim in their Written Statement that the land property at village Kurul was purchased in the name of Plaintiff through the joint family income and therefore the contesting Defendants had a share in the land property at Kurul as well. The Trial Court as well as the First Appellate Court rejected the contesting Defendants' claim that the land property at village Kurul was purchased by Plaintiff out of joint family income.

5 I have gone through the findings recorded by the Trial as well as the First Appellate Court. I have also considered the evidence on record placed in the form of compilation of documents by Mr. Kulkarni. The evidence of the Plaintiff, particularly his cross-examination would indicate that though he admitted that the family did not have any other income except suit properties, he also categorically stated in his cross-examination that he was working as agricultural farm labour at village

Kurul. Furthermore his admission about absence of any income except suit properties is attributable not to him alone but to the entire family which would include the branch of contesting Defendants as well. In the light of specific assertion made by the Plaintiff in his cross-examination that he was drawing income while working as farm labourer, it cannot be said that Plaintiff did not have any independent income through which he purchased the property at village Kurul. In fact it has come in his evidence at the time of his mother's death, Plaintiff was only 5/6 months old and started residing with her sister at village Kurul. It has also come on evidence that for 30/35 years, Plaintiff always resided separately at village Kurul from Defendants. Thus there is nothing on record to indicate that the Plaintiff received any amounts from contesting Defendants through the suit properties.

6 On the contrary, the evidence of DW-1 (Lahu Dudhale-Defendant No.4) would indicate that he was not even aware about marriage between Appa Vithoba Dudhale and Sakhubai. If he was not even aware about marriage between Appa and Sakhubai (Plaintiff's parents) it is difficult to hold that that Lahu Dudhale could have contributed anything for purchase of property at village Kurul. In the light of this position the suggestion sought to be given by the Defendant No.4 that he contributed an amount of Rs.60,000/- for purchase of property at Kurul appears to be totally unbelievable.

7 After considering the overall conspectus of the case, I do not find that any substantial question of law is involved in the present Appeal. The Second Appeal is accordingly rejected.

8 In view of the disposal of the Second Appeal, the Interim Application does not survive and the same is accordingly disposed of.

(SANDEEP V. MARNE, J.)