

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.398 OF 2019
WITH
CIVIL APPLICATION NO.1594 OF 2019
IN
SECOND APPEAL NO.398 OF 2019**

**Shobha Vijay Mulik & Ors.Appellants/Applicants
V/S
Anusuyabai Keshavrao Mulik & Ors.Respondents**

**WITH
SECOND APPEAL NO.76 OF 2019
WITH
CIVIL APPLICATION NO.13 OF 2022
IN
SECOND APPEAL NO.76 OF 2022**

**Vasant Bhimral Igave & Anr.Appellants/Applicants
V/S
Anusuyabai Keshavrao Mulik & Ors.Respondents**

Mr. Surel S. Shah *for the Appellants/Applicants in SA 398 of 2019 and CAS.*
Mr. Anand S. Kulkarni *for the Appellants/Applicants in SA 76 of 2019 and CAS.*
Mr. Ashok B. Tajane *a/w Mr. Yogesh Thorat for Respondents in both SAs and CAs.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 29 APRIL 2024.**

P.C.:

1 These Second Appeals are filed challenging decree dated 14 February 2019 passed by District Judge-6, Solapur in Regular Civil Appeal Nos.350 of

2012 and 71 of 2016. The Appeals arose out of decree passed by Joint Civil Judge Senior Division, Solapur in Special Civil Suit No.92 of 2007 by which the Trial Court proceeded to allow the suit filed by Plaintiff for partition and declared Plaintiff has 1/5th share in the suit properties. Appeals were filed before the First Appellate Court by original vendors as well as by the purchasers and both the Appeals have been dismissed. Accordingly, original vendors as well as purchasers have filed these two Appeals.

2 I have heard Mr. Shah, the learned counsel appearing for Appellants in Second Appeal No.398 of 2019 and Mr. Kulkarni, the learned counsel appearing for the Appellants in Second Appeal No.76 of 2022. The learned counsel for the Appellants has essentially raised two grounds in support of challenge to the decrees passed by the Trial and the First Appellate Court. It is contended that the land described in para 1-A(1) in the plaint was purchased in the name of Defendant No.3-Shobha Vijay Mulik and that therefore there was no question of partitioning the same. So far as the rest of the properties are concerned, it is the contention of the learned counsel that the said properties, even if they are held to be joint family properties, were sold after obtaining permission of the District Court in favour of Defendant Nos.1 and 2. That the legal necessity for sale of the property on behalf of minors is recognized by the District Court while granting permission for sale. It is submitted that this vital aspect is not taken into consideration, particularly by the First Appellate Court.

3 In my view the first contention raised by Mr. Shah and Mr. Kulkarni has considerable force in that the land described in para No.1A(1) in the plaint bearing City Survey No.63/2A/2A/2 admeasuring 0 H 50 R is admittedly purchased in the name of Defendant No.3-Shobha, who was not a co-parcener at the time of purchase of the said property. It is therefore questionable as to whether property purchased in the name of person who is not a co-parcener can be brought into the common hotchpotch by applying a principle absence of income for Shobha to purchase the said property.

4 So far as the second aspect is concerned, in my view mere procurement of permission from the District Court for sale of rest of the suit property on behalf of minors does not mean that the District Court has determined the issue about entitlement of the Plaintiff for share in the property which was proposed to be sold. In fact the application made by Defendant No.3-Shobha seeking permission of the District Court for sale of the property premised on an assertion that the property was self acquired property of her husband Vijay Mulik. The District Court therefore had no occasion to examine the issue as to whether the said properties were self acquired property or joint family property. I therefore not inclined to accept the second contention raised by Mr. Shah and Mr. Kulkarni.

5 On the contrary, Mr. Tajane, the learned counsel appearing for the original Plaintiff, after taking instructions from client fairly submits that Plaintiff is willing to give up share in respect of property at para No.1A(1) in

the plaint. Therefore instead of admitting the present Appeal on the first issue, in my view the decree can be modified by excluding the same in respect of property at para No.1A(1) in the plaint.

6 The Second Appeals are accordingly disposed of by rejecting all the contentions raised by the Appellants except in respect of the suit property described at para No.1A(1) in the plaint. The suit property described at serial No.1A(1) in the plaint i.e. City Survey No.63/2A/2A/2 admeasuring 0 H 50 R at village Bale within the limits of Solapur Muncipal Corporation shall stand excluded from the decrees of the Trial and the First Appellate Court. The decrees of the Trial and First Appellate Court shall accordingly stand modified to this limited extent and shall operate only in respect of suit properties described at para Nos.1A(2) to (6) and 1B. With the above directions, the Second Appeals are disposed of.

7 In view of rejection of these Second Appeals, nothing survives in the Interim Applications. The same are also disposed of.

(SANDEEP V. MARNE, J.)