

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

**SECOND APPEAL NO.560 OF 2020
WITH
CIVIL APPLICATION NO.1140 OF 2019
IN
SECOND APPEAL NO.560 OF 2020**

Tukaram Amruta Kachare

deceased through his legal heirs

....Appellants/Applicants

V/S

Bajirao Amruta Kachare & Ors.

....Respondents

Mr. Nikhil Wadikar i/b Mr. Nandu Pawar *for the Appellant/Applicant.*

Mr. Vaibhav R. Gaikwad a/w Mr. Atharva Dev, Ms. Saisha Pisal *for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

DATE : 11 MARCH 2024.

P.C.:

1 By this Appeal, Appellant challenges the judgment and decree dated 9 May 2019 passed by the Ad-hoc District Judge, Vaduj, dismissing Regular Civil Appeal No.38 of 2013 and confirming the

decree dated 23 January 2013 passed by Civil Judge Senior Division, Vaduj in Regular Civil Suit No.231 2012.

2 Plaintiffs' suit for partition was contested by Defendant No.1/Appellant by raising a plea that the suit properties described in paragraph 1A of the plaint were his self acquired properties. Total 7 properties were included in clause 1A of the plaint which included land bearing Gat No.98 which according to the Plaintiff is re-granted by order dated 18 October 1972 under provisions of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. According to the Appellant since the re-grant was made on a condition of impartibility of the land, the partition thereof was impermissible. So far as the rest of the 6 lands in clause 1A of the plaint are concerned, Defendant Nos.1 and 2 pleaded that the same were purchased by him under provisions of section 32G and 32M of the Bombay Tenancy and Agricultural Lands Act (**Tenancy Act**). Both the Trial and the First Appellate Court have held that the suit properties are ancestral properties in which Plaintiff had a share.

3 I have heard Mr. Wadikar, the learned counsel appearing for the Appellant and Mr. Gaikwad, the learned counsel appearing for Respondent No.1.

4 After having considered the submissions canvassed by the learned counsel appearing for the parties and after perusal of the judgments of the Trial and the First Appellate Court it is seen that none of the

properties are purchased by Defendant No.1. All the properties are earned by him in his capacity as tenant either under the provisions of the Tenancy Act or under the provisions of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. The Trial Court and the First Appellate Court have arrived at the finding that a tenancy was held by him as a Manager (Karta) of joint family. Though Mr. Wadikar has made strenuous attempts to impress upon me that Plaintiff failed to prove existence of nucleus of joint family for purchase of suit properties through that nucleus, in my view, it was not at all necessary for the Plaintiff to prove presence of such nucleus. This is so because Defendant No.1 has not purchased any other properties therefore there was no necessity for Plaintiff to prove presence of a nucleus through which the properties could be purchased. Once evidence was led that Defendant No.1 held tenancy in respect of those lands in his capacity as Karta of the joint family, the consequential benefits that he received through such tenancies would obviously be for the entire joint family. Mr. Wadikar's reliance on the condition of impartibility in the order of the re-grant does not cut any ice. Once it is proved that the re-grant is made in the name of Defendant No.1 on account of tenancy rights held by him on behalf of the entire joint family, the re-grant would also be for the benefit of the entire joint family.

5 In my view no substantial question of law is involved in the Second Appeal and the concurrent findings recorded by the Trial and the First

Appellate Court do not warrant interference. The Second Appeal is accordingly rejected.

6 In view of the disposal of the Second Appeal, nothing would survive in the Civil Application and the same is accordingly disposed of.

(SANDEEP V. MARNE, J.)