



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 210 OF 2018
WITH
CIVIL APPLICATION NO. 1360 OF 2017

Dharmaraj Gulab Pawar (since deceased)
Sou.Shanta D. Pawar, 1a) Ajit Dharmaraj Pawar ... Appellants.

Versus

Madhuri Ranjit Pawar ... Respondent.

Mr. Rushikesh C. Barge, Advocate for the Appellants.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 15, 2024

P. C.:

1. At the outset, learned counsel appearing for the Appellants seeks leave to amend the first substantial question of law. Amendment to be carried out forthwith.

2. Being dissatisfied by the judgment dated 11th July, 2017 passed in Regular Civil Appeal No.68 of 2011 confirming the findings of 7th Joint Civil Judge Junior Division, Satara in Regular Civil Suit No.424 of 2006, the Appellants who are the original defendant Nos.1 to 4 are before this Court.

3. Regular Civil Suit No.424 of 2006 was instituted by the

plaintiff seeking partition and separate possession in respect of the properties claimed as ancestral properties which included 16 landed properties and four house properties described in paragraph 1A and 1B of the plaint. The genealogy as indicated from the impugned judgment is that the defendant no.1-Dharmraj was the ancestor. Defendant Nos.2 and 3 are the first and second wife of defendant no.1 respectively and the plaintiff is the wife of the predeceased son of first wife of Dharmraj. Defendant No.4, is the son of the second wife and the brother-in-law of the plaintiff. Dharmraj's son Ranjeet died intestate on 17th January, 2004 and it is pleaded that after the death of her husband, the plaintiff continued to reside at matrimonial house alongwith defendant nos.1 to 4.

4. It was pleaded that the defendants have mortgaged some of the suit properties with defendant nos. 5 to 6 and the loan was not taken for the benefit of the joint hindu family. It was pleaded that on 30th June, 2006, when partition and separate possession of a share in the suit property was demanded, the same were refused.

5. The defendants filed their written statement. It was

pleaded in the written statement that the suit landed properties at Sr. Nos.6, 10, 11, 12 and 14 are the self acquired properties of the defendant no.1. There was admittedly no pleading as far as the other properties are concerned that they were self-acquired properties. It was further pleaded that the plaintiff left the matrimonial house on her own and that the father-in-law Dharmraj had transferred some lands in the name of Ranjeet and some lands in the name of Ajit i.e. the son of the first and the second wife respectively for their personal cultivation under a family arrangement. It was contended that the suit house properties have been built by the defendants out of their own funds and Ranjeet i.e. the deceased husband of the plaintiff had no right, title and interest in the suit properties.

6. The trial Court partly decreed the suit and determined the shares of the plaintiff and the defendant nos.1,3 and 2 at $5/16^{\text{th}}$ share and as far defendant nos.4 is concerned, at $1/16^{\text{th}}$ share. The Appellate Court framed the following points for determination, which read as under:

"No.	Points	Findings.
1	Does plaintiff prove that suit landed and house properties are ancestral joint family properties ?	Yes.
2	Do defendant Nos.2 to 4 prove that landed properties at Sr.Nos.6, 10 to 12, and 14 were self acquired properties of defendant No.1 ?	No.
3	Do defendant Nos.2 to 4 prove that suit house properties have been built by them out of income from the landed properties given to them under family arrangement ?	No.
4	Do defendant Nos.1 and 2 prove that the loan was obtained from defendant nos.5 and 6 for family need?	No.
5	Whether suit is bad for non-joinder of necessary parties ?	No.
6	Whether the impugned decree needs to be confirmed, reversed or modified?	Confirmed.
7	What order ?	As per final order."

7. The Appellate Court considered that there was a specific pleading made in the written statement in respect of only six landed properties and as such, by way of implication accepted that the other properties were the joint family properties. The Appellate Court also considered the admission in the cross-examination of

the defendant Nos.1, 2 and 3 that the suit property i.e. house properties are the ancestral properties.

8. The Appellate Court also considered that there has been no evidence produced on record to indicate that the properties at Sr.Nos. 6, 10 to 12 and 14 are self acquired properties of defendant no.1 as there is nothing to show separate ownership. The Appellate Court considered that the defendant no.1 i.e. Dharmraj was not shown to have any source of income other than the agricultural land and as such, the properties which are claimed to be self acquired properties are acquired out of nucleus of the joint family properties and as such, it has to be implied that the properties claimed to be self acquired properties are joint family properties.

9. Heard Mr. Barge, learned counsel appearing for the Appellants.

10. Mr. Barge, would contend that the substantial question of law which arises in the present case is that the plaintiff had failed to discharge the burden of proof to show that the suit land and house properties are the ancestral joint properties of family. He would further submit that during the proceedings, Will of

Dharmraj, who had expired during the pendency of the proceedings was brought on record however, same has not been taken into consideration, for the reason that the written statement was not amended and as such, there is perversity in the findings. He further submits that in view of the decision of the Apex Court in *Revanasiddappa and Another v. Mallikarjun and Others* reported in *(2023) 10 SCC 1*, the first substantial question of law framed in Appeal memo no longer survives for consideration.

11. Considered the submissions and perused the judgment of the Appellate Court and the Trial Court.

12. The relationship of the parties is not disputed. The plaintiff is the legally wedded wife of the son of the defendant no.1-Dhamdraj. The plaintiff has come with a specific case that the properties are the joint family properties of the parties and as such, sought partition and separate possession. For the purpose of proving that the property is the joint family properties, the initial burden is upon the plaintiff to show that there existed sufficient nucleus and that all the properties have been purchased from the said nucleus. It is thereafter, that the onus is upon the coparcener

who claims it to be a self acquired properties to show separate acquisition.

13. In the present case, the defendants have not pleaded that the properties apart from the properties at Sr.No.6, 10 to 12 and 14 are self acquired properties. Once there is no pleading to that effect and there being an admission in the cross-examination that the suit land and the house properties are ancestral properties, the finding of the Appellate Court that the admissions and pleadings supports the case of the plaintiff that the other suit properties are ancestral properties and joint family properties cannot be faulted.

14. As far as the properties at Sr. Nos. 6, 10 to 12 and 14 is concerned, the Appellate Court has considered the admission of the defendant no.4 that the defendant no.1 as an agriculturist and it was not shown that he has any other source of income from which the properties at Sr. Nos.6, 10 to 12 and 14 could be acquired. The plaintiff has established the nucleus and that the source of income was arising out of agricultural activities carried out by the family. In the absence of any independent source of income being shown no fault can be found with the Appellate

Court for answering the issue as regards the nature of the properties being the ancestral properties in the affirmative.

15. As regards the Will of Dharmraj is concerned, even though the Will have been produced on record in absence of any pleading as regards the Will in the written statement, same could not have been considered in evidence as the evidence is inadmissible.

16. In view of the above discussion, no substantial question of law arises in the present case, Appeal stands dismissed. In view of the dismissal of the Appeal, Civil Applications do not survive and stand disposed of.

(Sharmila U. Deshmukh, J.)