

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 611 OF 2023
ALONGWITH
INTERIM APPLICATION NO. 18201 OF 2023**

Suman Prakash Khandare

...Appellant

V/s.

Bharti Krishna Narayankar and Ors.

...Respondents

Mr. Ashwinikumar Deore, for the Appellant.

CORAM : SANDEEP V. MARNE, J.

Dated : 2 January 2024.

P.C. :

1. By the present Appeal filed under the provisions of Section 100 of the Civil Procedure Code, 1908 (**Code**), the Appellant challenges the Judgment and Order dated 30 July 2022 passed by the District Judge-1, Vaduj in Regular Civil Appeal No. 588 of 2010. By that Order, the learned District Judge has modified the Judgment and Decree passed by the Civil Judge Junior Division, Vaduj in Regular Civil Suit No. 198 of 2000 and allotted shares to Plaintiff and Defendants in suit for partition. The Trial Court had allotted 4/18th share in the suit properties in favour of the Plaintiff. The direction of the Trial Court has been

modified by the lower Appellate Court by directing that the Plaintiff shall be entitled to 1/3rd share in the suit property.

2. I have heard Mr. Deore, the learned counsel appearing for the Appellant.

3. According to Mr. Deore, substantial question of law with regard to the status of the Plaintiff is involved in the present Appeal. According to him, the marriage between the Plaintiff and her husband Purshottam was dissolved by customary deed of divorce. That it is a custom prevalent in the community of the parties to opt for divorce by executing a 'Sodchitthi' (Deed of Divorce). That accordingly Deed of Divorce dated 2 August 1978 was executed between the Plaintiff and her husband Purshottam. He would submit that copy of the Deed of Divorce could not be produced before the Trial Court (though the defence of execution of the document was specifically raised), however copy of the said document was filed before the lower Appellate Court and the lower Appellate Court refused to grant an opportunity to the Appellant to prove the said document by leading evidence.

4. I have perused the Orders passed by the Trial Court and the lower Appellate Court. The defence of dissolution of marriage between the Plaintiff and her husband Purshottam was taken before the Trial

Court and Issue No.2 was framed by the Trial Court casting burden on Defendant Nos. 1 and 2 to prove whether the marriage between the Plaintiff and her husband Purshottam was dissolved on 2 August 1978 or not. The said issue was answered in the negative by the Trial Court observing that Defendant Nos.1 and 2 did not produce the said deed of divorce dated 2 August 1978 nor led secondary evidence in respect thereof. It appears that a copy of the said document dated 2 August 1978 was produced before the lower Appellate Court. The lower Appellate Court had further arrived at a finding that mere production of the document was not sufficient and it was necessary for Defendant Nos. 1 and 2 to prove the same. It appears that Defendant Nos.1 and 2 did not lead any evidence to prove the said document. In addition to the said document dated 2 August 1978, the Appellate Court has also applied its mind to the other evidence produced by the parties with regard to the contention of dissolution of marriage between the Plaintiff and her husband Purshottam and has arrived at a finding that such dissolution could not be proved. In my view, these are findings on facts recorded by the Trial Court and lower Appellate Court, in which this Court is not expected to interfere in exercise of jurisdiction under Section 100 of the Code. I am therefore of the view that no substantial question of law is involved in the present Appeal.

5. Mr. Deore would contend that the decree has been put in execution and instead of executing the modified decree as per the

Judgment and Order dated 30 July 2022 passed by the first Appellate Court, the executing Court is erroneously executing the original decree of the Trial Court. In my view, since the original decree of the Trial Court has been modified by the first Appellate Court on 30 July 2022, what is executable is the modified decree of the first Appellate Court dated 30 July 2022. If the Appellant has any grievance about any error committed by the Executing Court in executing the decree, the Appellant would be at liberty to adopt necessary remedies in respect thereof. This issue need not be determined in the present Second Appeal.

6. Since no substantial question of law is involved in the Second Appeal, the Appeal is dismissed without any orders as to costs.

7.. With disposal of the Appeal, the Interim Application does not survive. The same also stands disposed of.

SANDEEP V. MARNE, J.