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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 266 OF 2018
WITH
CIVIL APPLICATION NO. 591 OF 2018
IN
SECOND APPEAL NO. 266 OF 2018

Sarjerao Baburao Koli ... Appellant/Applicant

vs.

Bhimrao Baburao Koli(Deceased ... Respondents
through Lrs) and Ors

Mr. Pratap Patil for Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATED : 15th OCTOBER 2024

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by defendant no.1 to challenge the judgment and decree passed by the First Appellate Court in his appeal. The First Appellate Court has reversed the trial court's decree granting 1/7th share to plaintiff, defendant no.1 and 1/7th share collectively to defendant nos. 5 to 7, and 1/7th share collectively to defendant nos. 2 to 4. The First Appellate Court has modified the decree and granted 1/4th share instead of 1/7th share to the plaintiff, defendant no.1 and jointly to defendant nos. 2 to 4. The First Appellate Court

held that the defendant nos. 1, 2 to 3 would get equal share in Baburao's $\frac{1}{4}$ th share. Baburao is the deceased father of plaintiff, defendant no.1 is the pre-decessor in title of defendant nos. 2 to 4 and defendant nos. 5 to 7.

2. Learned counsel for the appellant submits that the First Appellate Court has modified the trial court's decree by relying upon the decision of the Hon'ble Apex court in the case of *Prakash Vs. Phulavati*¹. He submits that the First Appellate Court held that the daughters would not get equal shares on the ground of coparcenary rights, hence shares were re-determined by the First Appellate Court by granting share to the daughters in Baburao's $\frac{1}{4}$ th share. He submits that the said modification made by the First Appellate Court is contrary to the decision of the Hon'ble Apex Court in the case of *Vineeta Sharma Vs. Rakesh Sharma and Ors*². He submits that in view of the legal principle settled in the case of *Vineeta Sharma*, even the daughters get equal shares. He submits that the second appeal would therefore require consideration on the point of re-determination of the share which is contrary to the legal principles settled by the Hon'ble Apex Court.

3. I have perused the impugned judgment. Learned counsel for the appellant may be right in submitting that in view of the legal

1 (2016) 2SCC 36

2 (2020) 9 SCC 1

principle settled by the Hon'ble Apex Court in case of ***Vineeta Sharma***, the daughters might get equal shares as coparcenars. So far as the decision in the case of ***Vineeta Sharma*** is concerned, the re-determination of the shares would depend upon any prior partition or disposition of the property prior to 20th December 2004. Hence, the point raised on behalf of the appellant would depend upon the consideration of the facts of the case. Even, otherwise the present second appeal is preferred by defendant no.1, i.e. one of the sons of Baburao. The daughters whose shares might be affected by the impugned decree have chosen not to challenge the impugned decree. Hence, at the behest of the defendant no.1, I see no reason to interfere in the impugned judgment on the ground raised on the legal principles settled in the case of ***Vineeta Sharma***. The said ground would require re-appreciation of the facts which is not permissible under section 100 of the Civil Procedure Code, 1908.

4. The second appeal does not raise any question of law. Hence, second appeal is dismissed.

5. In view of dismissal of the second appeal, civil application is disposed of as infructuous.

(GAURI GODSE, J.)