

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.36 OF 2023
WITH
INTERIM APPLICATION NO.416 OF 2023
IN
SECOND APPEAL NO.36 OF 2023

Shivaji Shankar Mahapure
since deceased through his legal heirs & Ors.Appellants/Applicants
V/S
Kaka Ganu Mahapure & Ors.Respondents

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Mr. Rushikesh G. Patil for the Appellants/Applicants.

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CORAM: SANDEEP V. MARNE, J.
DATE : FEBRUARY 02, 2024.

P.C.:

1 The challenge in the Appeal is to the judgment and decree dated 11 August 2022 passed by the District Court, Kolhapur, dismissing Regular Civil Appeal No.416 of 2012 and confirming the judgment and decree dated 27 June 2022 passed by the Civil Judge Junior Division, Panhala in Regular Civil Suit No.194 of 2001.

2 Plaintiffs are children of Shankar Mahapure who was allegedly born out of wedlock between Santu Mahapure and Yashoda/Yeshawada.

On the contrary it was the case of the contesting Defendants that Santu never married Yashoda. Though some of the Defendants (Defendant Nos.2, 5 and 8) did not express objection for decreeing the suit, the other contesting Respondents specifically denied relationship with the Plaintiffs. It has also come on record that Yashoda belongs to Christian community. Plaintiffs did not adduce any evidence to prove marriage between Santu and Yashoda. If indeed Yashoda belongs to Christian community, the marriage between Santu (Hindu) and Yashoda (Christian) ought to have been performed under the provisions of Special Marriage Act. No evidence is produced on record by the Plaintiffs to prove wedlock between Santu and Yashoda. Therefore no serious error can be traced in the view taken by the Trial Court and First Appellate Court holding that Plaintiffs were unsuccessful in proving that they are part of the joint family with the Defendants. No substantial question of law is involved in the present Appeal. The Second Appeal is accordingly dismissed.

3 In view of the dismissal of the Second Appeal, the Interim Application does not survive and the same is disposed of.

(SANDEEP V. MARNE, J.)