

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 490 OF 2020
WITH
INTERIM APPLICATION NO.3417 OF 2019

Krishna Hari Wagh And Ors.

...Appellants

Versus

Dhondiram Krishna Wagh And Ors.

...Respondents

....

Mr. Pramod G. Kathane, a/w. Ms. Indu Karunakaran a/w. Mr. Samyak A. Bhatbor, for Appellant.

Mr. Milind Deshmukh, for Respondent.

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CORAM : SANDEEP V. MARNE, J.

DATED : 31 JANUARY 2024.

P.C. :

By this Appeal, Appellants challenge Judgment and Order dated 27 August 2019 passed by the District Judge, Sangli partly allowing Regular Civil Appeal No.317 of 2015 only to the extent of determination of shares of properties and confirming rest of the decree passed by the Civil Judge, Junior Division, Sangli in Regular Civil Suit No.48 of 1989.

2. Plaintiff No.2-Babutai is the wife of Defendant No.1-Krishna and Plaintiff No.1 and Defendant No. 10 are their children. It appears that

Krishna solemnized another marriage with Lakshmi through whom daughter Chaya was born. Defendant No.5-Vikas and Defendant No.6-Swati are the children of Chaya. Plaintiffs filed RCS No.48 of 1989 seeking partition and separate possession and permanent injunction. The Trial Court decreed the Suit by Judgment and Order dated 22 September 2015 allocating various shares to Plaintiff Nos.1, 2 and Defendant No.10 on one hand and Defendant Nos.1, 3 and 4 on other hand. The Trial Court did not grant any share in favour of Defendant Nos.5 and 6 - Chhaya's children.

3. Aggrieved by non-grant of any share in the suit properties, Vikas and Swati (Defendant Nos.5 and 6) joined hands with grandfather Krishna-Defendant No.1 and filed Regular Civil Appeal No.317 of 2015 in the Court of District Judge, Sangli challenging the decree dated 22 September 2015. The First Appellate Court has rejected the claim of the Appellants and has maintained the decree to the extent of non-grant of any share to Appellant Nos.2 and 3. It has further modified shares granted in favour of Plaintiff Nos.1, 2 and Defendant No.10 on one hand and Defendant Nos.1, 2 to 4 on the other hand.

4. The net effect of the decree passed by the Trial Court and the First Appellate Court is that only Krishna, his wife Babutai, children

Dhondiram and Kusum and sisters Shantabai, Rajakka and Cheematai are granted shares in the suit property. The branch of Lakshmi (Krishna's second wife) has been excluded on account of the fact that marriage between Krishna and Lakshmi was solemnized during subsistence of his marriage, and is therefore void. Therefore, neither Chaya nor her children Vikas and Swati have succeeded in respect of any share in the suit property.

5. Mr. Kathane, the learned counsel appearing for Appellant would strenuously contend that Vikas and Swati must get share at least through Krishna. In this regard he would place reliance on the Judgment of the Apex Court in **Revensiddappa Vs. Mallikarjun**, Civil Appeal No.2844 of 2011 decided on 01 September 2023 and would submit that even if the marriage between Krishna and Lakshmi is void, the children grand children born out of that wedlock must get share in father's property. As on the date of decision of suit, Krishna was apparently alive. Vikas and Swati can claim share in Krishna's property only after his death. Being grand children born out of marriage between Krishna and Lakshmi, Defendant Nos.5 and 6 do not have independent right to seek share within partition between the joint family members.

6. Mr. Kathane has attempted to suggest that sisters had relinquished their rights in favour of their brother Krishna and that this factor has not been taken into consideration by Trial Court and First Appellate Court. Perusal of Orders passed by the Trial Court and First Appellate Court would indicate that both the Courts have refused to accept theory of relinquishment only on the basis of statements made by sisters before Revenue Authority and certification of mutation entry No.165. In absence of any written and registered instrument of relinquishment, both the Courts have rightly not taken into consideration the alleged theory of relinquishment.

7. Considering overall conspectus of the case, I am of the view that no serious error can be traced in the Orders passed by the Trial Court and First Appellate Court. No substantial question of law is involved in the present Appeal. The Appeal is accordingly rejected. Since the Appeal is rejected, nothing survives in the Interim Applications and the same are also disposed of.

SANDEEP V. MARNE, J.