



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.685 OF 2016

WITH

CIVIL APPLICATION NO.1362 OF 2016

IN

SECOND APPEAL NO.685 OF 2016

Rajendra Bajirao Patil & Ors.

...Appellants/  
Applicants

*Versus*

Karuna Prakash Patil & Anr.

...Respondents

WITH

SECOND APPEAL NO.583 OF 2016

WITH

CIVIL APPLICATION NO.1175 OF 2016

IN

SECOND APPEAL NO.583 OF 2016

Karuna Prakash Patil & Anr.

...Appellants/  
Applicants

*Versus*

Rajendra Bajirao Patil & Ors.

...Respondents

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Mr. Harshad Inamdar for the Appellants/Applicants in SA/685/2016  
& for the Respondents in SA/583/2016.

Mr. Girish Agrawal for the Appellants/Applicants in SA/583/2016 &  
for the Respondents in SA/685/2016.

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 31, 2024

P. C. :

1. Second Appeal No. 583 of 2016 and Civil Application No. 1175 of

2026 not on board. Upon mentioning, taken on board.

2. Being dissatisfied with the judgment dated 20<sup>th</sup> November, 2015 passed by the Appellate Court, the original Appellant as well as the original Defendant are before this Court.

3. By the judgment dated 20<sup>th</sup> November, 2015 the First Appellate Court partly allowed the Appeal and modified the decree of the Trial Court thereby declaring that the Respondent No. 2 and Appellant No. 3 each are entitled to have half share in the suit property.

4. The Appellants before the Appellate Court were the original Defendants. The Plaintiff No. 1 claims to be the wife of one Prakash Patil. It was her case that the suit property upon partition was allotted to the share of her husband and that the same was in his possession till his death on 13<sup>th</sup> August, 2004. It was pleaded that after his death, her in-laws started causing obstruction to the Plaintiffs while cultivating the property and as such, the suit came to be filed for partition and possession. The suit came to be resisted by the Defendants raising an objection that the Plaintiff No. 1 was not legally wedded wife of Prakash and that the Respondent No. 2 was not the son of deceased Prakash.

5. Pertinently, the aspect of partition was not denied. It was contended that the Defendants were cultivating the suit property as the deceased

Prakash was residing at Nashik. The parties went to trial and the Trial Court on the basis of evidence on record held that the suit property was allotted to the share of deceased Prakash and that the Respondent No. 1 was the legally wedded wife of deceased Prakash and Respondent No. 2 was their son and determined the shares accordingly.

6. The judgment and decree of the Trial Court came to be challenged by the Defendants in Regular Civil Appeal No. 238 of 2011 by which the claim of the Plaintiff No. 1 i.e. wife was negated and only the claim of Respondent No. 2 i.e. the of deceased Prakash was allowed. The Appellate Court considered that there was a marriage certificate in respect of the marriage which was solemnized between the Hemlata earlier wife and deceased Prakash on 20<sup>th</sup> June, 1991 and that the husband and wife were cohabiting till 16<sup>th</sup> July 1993. The earlier marriage of Prakash and Hemlata was dissolved on 6<sup>th</sup> October, 1994 and before the divorce could be granted, deceased Prakash had married the Plaintiff No.1. Considering the evidence which had come on record the Appellate Court held that the Plaintiff No. 1 was not the legally wedded wife of Prakash and she was not entitled to inherit the property left behind by deceased Prakash.

7. As regards the son, the Appellate Court noted that the contention of the Defendants that the Respondent No. 2 is not the son of the deceased Prakash was only a vague denial and that the birth certificate

which was produced on record at Exhibit 51 showing that the Respondent No. 2 was born on 23<sup>rd</sup> August, 1997 was sufficient for holding that the Respondent No. 2 was the son of Plaintiff No. 1 and deceased Prakash. As such, the Appellate Court has modified the decree of the Trial Court.

8. The findings of the Appellate Court on the documentary evidence do not suffer from any perversity. The issue as regards the entitlement of the son who is born out of void marriage is no longer *res integra* and has been settled by the Apex Court in the case of ***Revanasiddappa and Anr. vs. Mallikarjun and Ors. [AIR 2023 Supreme Court 4770]*** where the Apex Court has held that the child born out of a void marriage will be entitled to share in the property allotted to the father upon partition and will not be entitled to rights in or to the property of any other person other than the parents.

9. Considering the settled position in law no substantial question of law arises in both the Second Appeals. Second Appeals stand dismissed.

10. In view of dismissal of both the Second Appeals, nothing survive for consideration in the pending Applications therein and the same are disposed of as such.

(SHARMILA U. DESHMUKH, J. )