

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.691 OF 2019
WITH
CIVIL APPLICATION NO.1463 OF 2019
IN
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CIVIL APPLICATION NO.1462 OF 2019
IN
SECOND APPEAL NO.691 OF 2019

SHRI.SAVALIRAM DADA AHIRE

....Appellant/Applicant

V/S

BHAGA RAMA KEDARE AND OTHERS

....Respondents

...

Mr. Nitin Muley for the Appellant/Applicant.

Mr. Sachin Gite for the Respondent Nos.2 to 5.

...

CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 11, 2024.

P.C.:

SECOND APPEAL NO.691 OF 2019

1 Heard Mr. Muley, the learned Counsel appearing for the Appellant and Mr. Gite, the learned Counsel appearing for Respondent Nos.2 to 5. After hearing the learned Counsel appearing for the parties, the Second Appeal is admitted on following important questions of law:

- i) Whether Plaintiff No.1 can be held to be adoptive son of Tulsabai?

- ii) Whether a finding recorded while deciding Regular Civil Suit No.166 of 2000 about valid adoption of Plaintiff No.1 by Tulsabai would bind parties in Regular Civil Suit No.69 of 1998?
- iii) Whether Plaintiff is entitled to partition and separate possession of any share in the suit property?

2 Issue notices to Respondent Nos.1A to 1C in the Second Appeal, returnable on 5 March 2024.

CIVIL APPLICATION NO.1463 OF 2019

3 The Civil Application is filed seeking leave of this Court to lead additional evidence. It is the case of the Appellant/Applicant that he is the adoptive son of Tulsabai. The Trial Court has however disbelieved the said contention and has held that the Applicant/Appellant is not adoptive son of Tulsabai. However it appears that Regular Civil Suit No.166 of 2000 was filed by Appellant/Applicant alongwith one Rajiyabano in respect of properties at Malegaon. In judgment and decree dated 14 December 2006 the Trial Court therein has recorded a finding that there is a valid adoption by Tulsabai of Appellant/Applicant. It appears that the said judgment and decree dated 14 December 2006 passed in RCS No.166 of 2000 has attained finality on account of dismissal of the Civil Appeal No.1 of 2007 by District Judge, Malegaon and subsequently on account of dismissal of Second Appeal No.225 of 2012 by this Court. In that view of the matter, the Appellant/Applicant shall be permitted to

rely upon the orders sought to be produced alongwith the Civil Application at the time of final hearing of the Appeal. Relevance of those documents to the question of law involved in the present Appeal shall be decided by the Court at the time of final hearing of the Appeal. The Civil Application is accordingly disposed of.

CIVIL APPLICATION NO.1462 OF 2019

4 Issue notice to Respondent Nos.1A to 1C, returnable on 5 March 2024. In addition to Court notice, the Applicant is permitted to serve the private notice on the Respondents and file Affidavit of service before the next date of hearing.

5 Till the next date of hearing the Respondents shall not create any third party rights in respect of 1/3rd share claimed by the Applicant in the suit property.

6 List the Civil Application for orders on 5 March 2024.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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