



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.316 OF 2018
WITH
CIVIL APPLICATION NO.722 OF 2018
WITH
INTERIM APPLICATION NO.17654 OF 2023
WITH
INTERIM APPLICATION NO.4211 OF 2023
WITH
INTERIM APPLICATION NO.1632 OF 2022

Prakash Dhaval Patil ... Appellant.

Versus

Smt.Sumanbai Nimba Pagar ... Respondents.

WITH

INTERIM APPLICATION NO.17660 OF 2023

Shri. Raosaheb Dattatray Patil ... Applicant.

Versus

Smt.Sumanbai Nimba Pagar ... Respondents.

Mr.Pramod N. Joshi, Advocate for the Appellant.

Mr. S.S.Kulkarni, Advocate for the Applicant in IA/4211/2023 and
IA/1632/2022.

Mr.Shilpan Gaonkar a/w. Mr. Dnyaneshwar Jadhav, i/by Legasis
Partners for Respondents.

Mr.Swapnil Mhatre i/by Mr.Sachin Chavan, Advocate for the
Intervener in IA No.17660/2023.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 22, 2024

P. C.:

1. Being dissatisfied with the judgment dated 21st January, 2017 passed in Regular Civil Appeal No.146 of 2014 confirming the findings of the trial Court in Special Civil Suit No.59 of 2009, whereby the trial Court has declared that the plaintiff and the defendant nos.1 and 2 are entitled to 1/3rd share in the suit property described in paragraph Nos.1(a) to 1(d) i.e. the ancestral property and that the plaintiff and the defendant no.2 are entitled to half share each in the property described in paragraph Nos.1E to 1P, the original Defendant No.1 is before this Court.

2. Briefly stated the facts of the case are that Special Civil Suit No.59 of 2009 was filed by the Respondent No.1-plaintiff for declaration, injunction, partition and separate possession of the suit properties. The properties described in paragraph No.1(a) to 1(d) of the plaint are the joint family ancestral properties of the plaintiff and the defendants, whereas, the properties described in paragraph No.1(i), 1(j) to 1(l), 1(n), 1(o) and 1(p) are the self acquired properties of late Supdu Daval Patil and the properties described in paragraph No.1(f) are the self acquired properties of late Kesharbai Daval Patil, and the properties mentioned in

paragraph No.1(h), 1(i)(part), 1(j)(part), 1(m), 1(p) (part) and plot No.19 are the self acquired properties of late Pushpalata Supdu Patil and the properties described in paragraph No.1(h) (part) and 1(p)(part) are the self acquired properties of late Rakesh Supdu Patil.

3. The case of the plaintiff was that the Appellant, who is the Defendant No.1 is her real brother, and the defendant no.2 is her sister. On 24th October, 2016, the defendant no.1 committed the murder of his brother Supdu Daval Patil, his wife Pushpalata Supdu Patil, son-Rakesh Supdu Patil and daughters Poonam and Rupali alongwith their mother Kesharbai Daval Patil on account of family dispute of partition. The defendant no.1 was convicted for life imprisonment for the murders. It was pleaded by the plaintiff that the defendant no.1, through his daughter Manjusha Prakash Patil, under the pretext of effecting partition of the suit properties played fraud on the plaintiff and defendant no.2 fraudulently got executed registered sale deed in respect of the suit properties on 5th December, 2006 and thereafter, on 12th December, 2006 under the pretext of correction of some clerical mistakes got executed

correction deed from the plaintiff and defendant No.2.

4. It was further pleaded that the said fact came to the notice of the plaintiff when public notice was issued in respect of alienation of some of the suit properties. It was pleaded that the partition was sought from the defendant no.1 however, it was refused and as such, the suit was filed. The summons was served upon the defendant no.1 in jail. He did not cause any appearance through his advocate and as such, the suit proceeded against the defendant no.1. Despite service of summons, the defendant no.2 did not appear and the proceedings proceeded ex-parte against the defendant no.2 also. The trial Court framed the issues which read thus:

<i>"Points</i>	<i>Findings</i>
1 Whether plaintiff prove that the release deed dated 05/12/2006 and correction deed dated 12/12/06 got executed by the daughter of defendant No.1 by misrepresentation and playing fraud on her ?	.. In affirmative
2 Whether plaintiff prove that she is entitle for 1/3 share in the properties described in para 1(a) to 1(d) of the plaint ?	.. In affirmative
3 Whether plaintiff prove that she is entitle	

for 1/2 share and defendant No.1 is also entitle for 1/2 share in the properties described in para 1(e) to 1(p) of the plaint ?

.. In affirmative

4 Whether plaintiff is entitle for declaration as prayed for ?

.. In affirmative

5 Whether plaintiff is entitle for relief of injunction, partition and separate possession of her share in the suit properties ?

.. In affirmative

6 What order ?

Suit is decreed with costs."

5. The trial Court decreed the suit declaring that as regards the ancestral properties plaintiff and defendant nos.1 and 2 have 1/3rd share each and in other properties plaintiff and defendant no.2 are entitled to 1/2 share each. As against the judgment of trial Court, Regular Civil Appeal No.146 of 2014 was filed which came to be dismissed.

6. Heard learned counsel for the respective parties.

7. Learned counsel appearing for the Appellant submits that as the Appellant was convicted, the proceedings went ex-parte against the defendant no.1 before the trial Court. He would further

submit that the Appellate Court failed to consider that the relinquishment deed was duly executed by the plaintiff and the defendant no.2 in favour of the defendant no.1 and as the suit proceeded ex-parte, no evidence in that behalf could be led. He submits that the substantial question of law which arises in the case is that in absence of Manjusha, the daughter of the Appellant in respect of whom the allegations of fraud was made was not made a party and in her absence the suit itself was not maintainable. He would further submit that the trial Court and the Appellate Court failed to consider that by virtue of the release deed, the Appellant became owner of the suit property of Supdu Daval Patil and as such was entitled to the share of the plaintiff and the defendant no.2 in the properties of the Supdu Patil.

8. Considered the submissions and perused the record.

9. The position is not disputed that the Appellant has committed the murder of his brother-Supdu Daval Patil, Supdu's wife, Supdu's son and two daughters as well as his mother Kesharbai and was undergoing life imprisonment for murders committed. There is also no dispute that property at paragraph

no.1(a) to 1(d) of the plaint are the only ancestral properties of the parties and the other properties are the self acquired properties of Supdu or his wife or their mother Kesharbai. Provisions of Section 25 of the Hindu Succession Act is clear and disqualifies a person who commits a murder from inheriting the property of the person murdered or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder. Thus apart from the ancestral properties, the Appellant had no right to claim any share in the properties of the person whom he has murdered. Even if the relinquishment deed by the plaintiff and the defendant no.2 is assumed to have been executed, the same in my opinion, will have no consequence as the statutory provisions itself disqualifies a murderer from inheriting the property of the person whose murder has been committed.

10. In my opinion, the contractual deed if any will have to yield to the statutory provisions and even if the relinquishment deed has stated to have been executed the same will not entitle the Appellant to claim any right in the properties of Supdu, his wife,

his son or their mother-Kesharbai. Before the Appellate Court there is no application which is made under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for leading evidence and therefore, at the stage of Second Appeal it cannot be contended that the Appellant by virtue of being in jail had not been granted an opportunity to lead evidence. The Appellant had filed the appeal against the order of trial court and had ample opportunity to file an application under Order 41 Rule 27 for leading of the evidence which has not been done in the present case. As regards the submissions that the daughter of the Appellant has not been made as a party. If the averments in plaint are perused, the contention is that defendant no.1 through his daughter got executed relinquishment deed through fraud. By the averments, the plaintiff has provided specific details of the manner in which fraud was played. That does not make Manjusha a necessary party. The Appellant was served with the copy of the summons and he has chosen neither to depute his constituted attorney to contest the proceedings nor appointed an Advocate. As such, the testimony of the plaintiff as regards the execution of the fraudulent deed at the instance of the daughter has remained unchallenged.

11. The trial Court on the basis of the evidence of the plaintiff considered the undisputed fact as regards the murder by the defendant no.1 of his brother Supdu and his family as well as his mother and that for the same, the defendant no.1 is undergoing sentence of life imprisonment. The trial Court considered the deposition of the plaintiff that the property described in paragraph No.1(a) to 1(d) are ancestral properties whereas, the other properties are the self acquired properties of Supdu Patil, her mother and the wife and sons of Supdu Patil. In her deposition, the plaintiff has deposed about the execution of the release deed by fraud and cheating. In support, the plaintiff examined a witness named Zumbar Chaitram Patil, who supported the version of the plaintiff. Upon consideration of the evidence come on record and in view of Section 25 of the Hindu Succession Act, the trial Court declared that the plaintiff and the defendant nos.1 and 2 are entitled to $1/3^{\text{rd}}$ share each in the ancestral properties and that in respect of the other properties the plaintiff and the defendant nos.1 and 2 are entitled to $1 \frac{1}{2}$ share. The Appellate Court conquered with the findings of the trial court and dismissed the

Appeal.

12. The submission of the learned counsel for the Appellant entered into realm of appreciation evidence which is not permissible under the provisions of Section 100 of the Code of Civil Procedure, 1908. Having regard to the discussion above, no substantial question of law arises. Appeal stands dismissed.

13. In view of the dismissal of the Appeal, Interim and Civil Applications do not survive for consideration and stand dismissed.

(Sharmila U. Deshmukh, J.)