

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.546 OF 2023

WITH

INTERIM APPLICATION NO. 17222 OF 2023

Nandakumar Tukaram Jadhav And Anr. ...Appellants

Versus

Sou. Malan Dattatraya Jadhav ...Respondent

....

Mr. Abhaykumar Apte, for Appellant.

....

CORAM : SANDEEP V. MARNE, J.

DATED : 22 JANUARY 2024.

P.C. :

Challenge in the present Appeal is to the Judgment and Order dated 11 January 2023 passed by the District Judge, Baramati dismissing Regular Civil Appeal No.162 of 2016 filed by the Appellants and confirming the decree dated 17 October 2016 passed by the 4th Jt. Civil Judge, Junior Division, Baramati.

2. I have heard Mr. Apte, the learned counsel appearing for Appellant. The first point sought to be raised is about Plaintiff's suit bearing Regular Civil Suit No.115 of 2013 being barred by principles of *res judicata*. This contention is raised on account of filing of RCS No.300 of 1997 by Smt. Dhondabai Parvati Sapkal in which Plaintiff-Malan Dattatray Jadhav was

power of attorney holder. I have gone through the plaint in RCS No.300 of 1997. The said suit is filed by Dhondabai Parvati Sapkal. Though Plaintiff-Malan Jadhav may have acted as constituted attorney of Dhondabai, in the event of suit being decreed Dhondabai would have secured declarations as sought for in the plaint. Plaintiff-Malan would not have secured any decree in her capacity as power of attorney holder of Dhondabai. Thus parties in RCS No.300 of 1997 and RCS No.115 of 2013 are not same. Furthermore the properties in both the suits are also not same. RCS No.300 of 1997 was filed only in respect of Gat No.337 whereas RCS No.115 of 2013 is filed in respect of Gat Nos.337, 338 and 173. Thus, the suit properties are also not identical. Also the nature of relief sought in the two suits are also different. Dhondabai sought declaration in RCS No.300 of 1997 that she is sole owner in respect of land bearing Gat No.337. On the contrary, Plaintiff-Malan asserted that the three suit properties including land bearing Gat No.338 is the joint family property. RCS No.300 of 1997 was for declaration of exclusive ownership of Dhondabai whereas RCS No.115 of 2013 is for partition. In my view, therefore the Trial Court and First Appellate Court has rightly held that the Suit of the Plaintiff is not barred by the principle *res judicata*.

3. Next issue sought to be raised by Mr. Apte is about suit properties being self acquired properties of the Appellants. I have gone through the Judgments delivered by the Trial Court and First Appellate Court. After appreciation of evidence on record both the Courts have recorded findings of facts that the suit property are ancestral properties and not self acquired property of the Defendant in Suit. No interference is warranted in the said findings of fact in exercise of jurisdiction by this Court under section 100 of the Code of Civil Procedure, 1908.

4. After considering overall conspectus of the case, I am of the view that no substantial question of law involved in the present Appeal. Second Appeal is accordingly dismissed. Since the Appeal is disposed of nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.

KISHOR
VISHNU
KAMBLE

Digitally signed
by KISHOR
VISHNU
KAMBLE
Date:
2024.01.24
17:31:02 +0530