

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.79 OF 2024

WITH

IA/16545/2023 IN SA/79/2024

Manisha Shivaji Pawar And Others

... Appellants

Versus

Anusaya @ Nirmala Ankush Pawar And Others

... Respondents

....

Mr. Kedar P. Lad, i/b. Mr. P. D. Dalvi, for Appellants.

Mr. Siddharth Shitole, a/w. Akshay Kulkarni, for Respondent No.1.

....

CORAM : SANDEEP V. MARNE, J.

DATED : 29 FEBRUARY 2024.

P. C. :

By the present appeal, Appellants challenge Judgment and Order dated 06 December 2022 passed by Additional District Judge-1, Sangli in Regular Civil Appeal No.383 of 2013. The First Appellate Court has modified the decree dated 20 September 2013 passed by 2nd Jt. Civil Judge, Sr. Division, Vita in Regular Civil Suit No.747 of 2021 but to the limited extent of granting 1/5th share to the Plaintiff in both the houses and in the open spaces. So far as the agricultural lands are concerned, claim of the Plaintiff for share therein was rejected by the Trial Court and that decision is upheld by the First Appellate Court.

2. I have heard Mr. Lad, the learned counsel appearing for Appellant and Mr. Kulkarni, the learned counsel appearing for Respondent.

3. Plaintiff sought partition of several properties including various agricultural lands situated at village Ainwadi as well as village Khanapur in Tal. Khanapur, District Sangli. She also sought partition in respect of two house properties at village Ainwadi, Tal. Khanapur, Dist. Sangli alongwith open spaces abutting them. The Trial Court proceeded to dismiss the entire suit of the Plaintiffs on 20 September 2013 holding that there was already a registered partition deed executed between the parties. The First Appellate Court has confirmed said finding of the Trial Court. However it found that the house properties were not included in the said registered partition deed. This is why Plaintiffs is granted 1/5th share in the house properties.

4. Mr. Lad would submit that said house properties are self acquired properties of the Defendants / Appellants. However written statement filed by the Appellants does not show that any such pleading was raised in the written statement. Mr. Lad would submit that it is for the Plaintiff to prove that house properties were not ancestral properties. Perusal of the plaint would show that the Plaintiffs specifically averred in the plaint that the suit properties including the house properties are ancestral properties of the family. Once such pleading is raised by the Plaintiff, it was for the Appellants to raise specific pleadings that the house properties are their self acquired properties. Since there is no denial on the part of Appellant about Plaintiff's assertion regarding ancestral nature of the house properties, there was no need for the Plaintiff to lead any evidence to prove that the house properties are ancestral properties of the family.

5. In my view therefore, no serious error can be traced in the view taken by the First Appellate Court by treating the house properties to be ancestral properties and granting 1/5th share to the Plaintiff therein. No substantial question of law is involved in the present Appeal. Appeal is accordingly rejected. Since the Appeal is rejected, nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.

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