

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.751 OF 2022
WITH
CIVIL APPLICATION NO.694 OF 2019
IN
SECOND APPEAL NO.751 OF 2022

MRS. VIJAYA VILAS MALBARI
V/S
SMT. VRUSHALI VILAS MALBARI & ORS

....Appellant/Applicant
....Respondents

...
WITH
INTERIM APPLICATION NO.20088 OF 2022
IN
SECOND APPEAL NO.751 OF 2022

SMT. VRUSHALI VILAS MALBARI
IN THE MATTER BETWEEN
MRS. VIJAYA VILAS MALBARI
V/S
SMT. VRUSHALI VILAS MALBARI & ORS

....Applicant
....Appellant
....Respondents

...

Mr. Mandar Limaye for the Appellant/Applicant in SA and IA.
Ms. Neeta P. Karnik for the Respondent No.1 in SA and for the Applicant
in IA 20088 of 2022.

...

CORAM: SANDEEP V. MARNE, J.
DATE : JANUARY 11, 2024.

P.C.:

1 The Appellant has filed the present Appeal challenging the judgment and decree dated 11 December 2018 passed by the District

Judge, Thane, in Civil Appeal No.33 of 2016 thereby confirming the judgment and decree dated 29 July 2011 passed by the Civil Judge Senior Division, Thane in Special Civil Suit No.480 of 2007.

2 It appears that the deceased Vilas Malbari had solemnized two marriages. His first marriage was with Plaintiff Vrushali. The marriage between Vilas and Vrushali is not under dispute. It appears that subsequently Vilas married Vijaya. It is the Appellant Vijaya's case that Vilas had divorced Vrushali and on such representation, the marriage between Vilas and Vijaya was solemnized. Perusal of the findings recorded by the Trial Court and the First Appellate Court would indicate that no material could be produced by the Appellant Vijaya to prove dissolution of marriage between Vilas and Vrushali. There is no dispute to the position that the solemnization of marriage between Vilas and Vijaya is subsequent to the marriage between Vilas and Vrushali. Once Appellant Vijaya fails to prove that the marriage between Vilas and Vrushali was dissolved by decree of divorce, her marriage becomes void. The children born out of void marriage are however legitimate. It is on this count that the Trial Court and the First Appellate Court have held that Appellant Vijaya's children – Satish and Rupesh to be included in the heirship certificate. Thus though Appellant Vijaya is not held entitled for inclusion of her name in the heirship certificate, the names of her children are included in heirship certificate. No error can be traced in the concurrent findings recorded by the Trial and First Appellate Court.

3 No substantial question of law is involved in the present Appeal. The Second Appeal is accordingly rejected.

4 In view of the disposal of the Second Appeal, nothing survives in the Civil Application and Interim Application and the same are disposed of accordingly.

(SANDEEP V. MARNE, J.)

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.01.15
13:09:01
+0530