

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 315 OF 2020****WITH****CIVIL APPLICATION NO. 767 OF 2018****AND****INTERIM APPLICATION NO. 144 OF 2024****IN****SECOND APPEAL NO. 315 OF 2020**

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|---|---|----------------|
| 1. Vishnu Balwant Wagh (Patil) | } | |
| Age : 84 years, Occu.: Agriculture, | } | |
| Science deceased deleted vide Exh. 27 | } | |
| 2. Smt. Sonabai Vishnu Wagh (Patil), | } | |
| Age : 70 years, Occu. : Household, | } | |
| 3. Shri Babaso Vishnu Wagh (Patil), | } | |
| Age : 60 years, Occu. : Agriculture, | } | |
| 4. Shri. Nandkumar@ Dadaso Vishnu Wagh (Patil), | } | |
| Age : 51 years, Occu : Agriculture, | } | |
| Nos. 2 to 4 R/O : Arawade, | } | |
| Taluka Tasgaon, Dist : Sangli. | } | ... Appellants |

Versus

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|-------------------------------------|---|
| 1. Shri. Subhash Vishnu Wagh Patil | } |
| Age : 63 years, Occu.: Agriculture, | } |
| 2. Sou. Shantabai Vishnu Wagh Patil | } |
| Age : Adult, Occu. : Household, | } |

3. Sou. Alka Shiddu Gaikwad }
 Age : 43 years, Occu. : Household, }
 R/o : Balwadi, Taluka : Khanapur, }
 Dist : Sangli. }
4. Shri. Appa Balawant Wagh (Patil)
 Age : 78 years, Occu : Agriculture, }
5. Shri. Tanaji Nanaso Wagh (Patil) }
 Age : 40 years, Occu.: Agriculture, }
6. Sou. Indabai Nanaso Wagh (Patil) }
 Age : Adult, Occu. : Household, }
7. Sou. Sushila Nanaso Wagh (Patil) }
 Age : Adult, Occu. : Household, }
8. Chaya Nanaso Wagh (Patil) }
 Age : 37 years, Occu.: Household, }
9. Sou Sangita Uttam Gaikwad }
 Age : 40 years, Occu.: Household, }
 R/O : C/O Uttam Ganpati Gaikwad,
 Lengare Vita Road Vasti,
 Tal : Khanapur, Dist. : Sangli.
10. Sou. Rajakka Ramu Gaikwad, }
 Age : 50 years, Occu. : Household, }
 R/O Balwadi, Tal : Khanapur,
 Dist : Sangli
11. Shri. Shamrao Namdeo Chavan, }
 Age : 70 years, Occu. : Agriculture, }

12. Shri. Mahadev Akaram Wagh (Patil)	}	
Age : 51 years, Occu : Agriculture,	}	
13. Shri. Shankar Ganpati Patil	}	
Age : 71 years, Occu.: Agriculture,	}	
Defendant No. 16 is dead and he has	}	
only heir wife i.e. Respondent No.3	}	
Defendants No. 1, 2, 4, to 8, 11 to 13	}	
R/o : Arwade, Tal : Tasgaon,	}	
Dist : Sangli	}	.. Respondents

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Mr. Ashutosh M. Kulkarni for the Appellant.

Mr. Kuldip U. Nikam i/b Mr. Om Latpate for Respondent Nos. 1 & 2.

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CORAM : SANDEEP V. MARNE J.

DATE : 11 JANUARY, 2024.

JUDGMENT:-

1) This Appeal is filed by the Appellants challenging the Judgment and Decree dated 31 March 2018 passed by District Judge, Sangli dismissing Regular Civil Appeal No. 408 of 2008 and thereby confirming the Decree dated 18 October 2008 passed by Civil Junior Division Tasgaon in Regular Civil Suit No. 179 of 1999.

2) Briefly stated, the facts of the case are that Vishnu Balwant Wagh originally owned and possessed the suit properties. He was married to

Shantabai Vishnu Wagh. Out of wedlock between Vishnu and Shantabai, son -Subhash is born. Vishnu also married Sonabai and out of that wedlock, two sons Babaso and Nandkumar and one Daughter Alka is born. The present Appeal arises out of disputes between the First wife Shantabai and her son Subhash on one hand and Vishnu's second wife Sonabai and their children Babaso, Nandkumar and Alka on the other hand. Subhash and Shantabai instituted Regular Civil Suit No. 179 of 1999 seeking partition and separate possession of the suit properties and seeking $2/3^{\text{rd}}$ share. The suit was resisted by Appellant-Defendant No.1 Vishnu by filing Written Statement. Defendant Nos. 2 to 4 – Sonabai, Babaso and Nandkumar filed separate written statements and also raised a counterclaim and sought injunction against Plaintiffs from obstructing possession of suit property by them. The Trial Court proceeded to decree the suit on 18 October 2008 declaring that Plaintiffs Subhash and Shantabai have $2/3^{\text{rd}}$ joint share in the suit properties and that Defendant No.1 has $1/3^{\text{rd}}$ share in the suit properties. This is how Sonabai, Babaso, Nandkumar and Alka are denied any share in the suit properties holding that Sonabai's marriage with Vishnu is void under provisions of Section 11 of the Hindu Marriage Act.

3) Aggrieved by the decree of the Trial Court, Vishnu, Sonabai, Babaso and Nandkumar filed Regular Civil Appeal No. 408 of 2008 before District Judge, Sangli, in which Alka was impleaded as party Respondent. By

its Judgment and Order dated 31 March 2018, the first Appellate Court has dismissed the Appeal and has confirmed the decree of the Trial Court. Aggrieved by the decision of the Trial Court and the first Appellate Court, Vishnu, Sonabai, Babaso and Nandkumar have filed the present Appeal.

4) Mr. Kulkarni the learned counsel appearing for the Appellant would submit that the marriage between Vishnu and Sonabai is valid as the same was solemnized prior to coming into effect of the Hindu Marriage Act. That the Trial Court and the first Appellate Court did not have any concrete evidence for arriving at a finding that the marriage between Vishnu and Sonabai has been solemnized after coming into effect of the Hindu Marriage Act. That such finding is recorded merely on the basis of surmises and conjectures, in the absence of any concrete evidence.

5) The next submission of Mr. Kulkarni is that the learned Trial Court and the first Appellate Court have erred in casting the burden of proving legal necessity for the sale of suit properties by Vishnu in favor of Defendant Nos. 2 to 4. That in a suit filed by the Plaintiffs challenging the Sale deeds, the burden of proving the Sale deeds as void rested solely on the shoulders of the Plaintiffs. The Trial Court and the first Appellate Court have erroneously presumed the Sale deeds to be void in the absence of any evidence being produced by the Defendants.

6) Lastly, Mr. Kulkarni would submit that the suit was clearly barred by limitation as the Sale deeds executed in the year 1999 could not have been challenged in a suit amended in the year 2003. That the Trial Court and the first Appellate Court have erroneously computed the period of limitation from the date of knowledge of the execution of Sale deeds, when the Sale deeds are registered and presumed to be known to the Plaintiffs. That challenge to the Sale deeds was belatedly raised by amending the plaint in the year 2003 and the amendment cannot relate back to the date of filing of the suit.

7) Mr. Kulkarni would therefore submit that substantial questions of law are involved in the present Appeal warranting its admission and setting aside the Orders passed by the Trial Court and the first Appellate Court.

8) *Per contra*, Mr. Nikam the learned counsel appearing for Respondent Nos. 1 and 2 would oppose the Appeal and support the Orders passed by the Trial Court and the first Appellate Court. He would submit that no substantial question of law is involved in the present Appeal and findings recorded on the questions of fact decided by the Trial Court and the first Appellate Court do not warrant interference by this Court in the exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

9) I have considered the submission canvased by the learned counsel appearing for the rival parties and have gone through the pleadings, evidence and judgments of the Trial Court and the first Appellate Court. Mr. Kulkarni has placed on record a compilation for perusal of the relevant pleadings, documents and evidence.

10) This is a typical dispute between the branches of two wives claiming share in the ancestral properties. There is no dispute to the position that the marriage between Vishnu and Shantabai was solemnized at a prior point of time and Subhash was born before Vishnu married Sonabai. There is the great degree of debate between the parties as to the exact date of the solemnization of marriage between Vishnu and Sonabai. The Appellants/ Orig. Defendant Nos. 1 to 4 sought to plead before the Trial Court that the marriage between Vishnu and Sonabai was solemnized before coming into effect of the Hindu Marriage Act, 1955. It was necessary for them to take this defence as they know that solemnization of a second marriage during the subsistence of earlier marriage renders the subsequent marriage void under the provisions of Section 11 of the Hindu Marriage Act. It is for this reason that it was sought to be urged before the Trial Court that Sonabai married Vishnu before 1955. However, a perusal of two written statements filed by Vishnu and Defendant Nos. 2 to 4 would show that no specific date of solemnization of marriage is pleaded therein. Thus Defendant Nos. 1 to 4 left

it for the Trial Court to guess as to what is the exact date of marriage between Vishnu and Sonabai. On the other hand Plaintiffs came up with a specific case that the marriage was void on account of it being solemnized during the subsistence of the first marriage. Though Mr. Kulkarni has attempted to canvass that the burden of proving solemnization of marriage between Vishnu and Sonabai after coming into effect of the Hindu Marriage Act rested on the shoulders of Plaintiffs, I am unable to agree with the said contentions. The Plaintiffs came with a specific case that the marriage was void. It was Defendant Nos. 1 to 4 who sought to give validity to the marriage by contending that the same was solemnized before coming into effect of the Hindu Marriage Act. Therefore the burden of proving this assertion rested on Defendant Nos. 1 to 4 and not on Plaintiffs. Defendant Nos. 1 to 4 could not discharge the burden by leading evidence about the solemnization of marriage prior to 1955.

11) Having left it for the Trial Court and the first Appellate Court to guess as to what could be the exact date of solemnization of marriage, the Courts below have looked into the surrounding circumstances about year of births of Subhash and the ages of Babaso and Nandkumar reflected in various documents. The first Appellate Court has held that the ages of Defendant Nos. 3 and 4 reflected in the Sale deeds on 24 June 1999 proved that they could have been born in the years 1965-1967 respectively. It has

come on record that Shantabai allegedly left Vishnu when Subhash was six months old. Subhash is born in the year 1956. Based on these circumstances the first Appellate Court has assumed that the marriage between Vishnu and Sonabai must have been solemnized after the year 1956. I do not find any reason to interfere in the said finding of fact recorded after taking into consideration the evidence on record. It is thus conclusively provided that the marriage between Vishnu and Sonabai was performed after coming into effect on the Hindu Marriage Act and the same is therefore void. As held by the Apex Court in its judgment in ***Revanasiddappa***¹ children born out of void marriage do not become coparceners and only claim rights in share allotted to the father. Therefore, neither Sonabai nor her children Babaso, Nandkumar and Alka can claim any independent share as coparceners in the suit property. The Trial Court has thus rightly denied any share in the suit property to Sonabai, Babaso, Nandkumar and Alka.

12) An alternate plea is raised by Babaso and Nandkumar of having acquired title in the suit properties on the strength of Sale deeds executed by Father – Vishnu in their favor on 7 June 1999, 24 June 1999, 30 March 1999 and 27 November 2022. Since father-Vishnu is not the exclusive owner in respect of the suit properties and could have at the highest alienated only his share, a defence is taken that alienation of property by father-Vishnu, in his

¹ Revanasiddappa Vs. Mallikarjun 2023 SCCOnLine 1084

capacity as 'Karta' of joint family, was towards legal necessity. The Trial Court and the first Appellate Court have refused to believe the theory of legal necessity. Vishnu claimed in his written statement that the Sale deeds were executed for specific family debts and medical expenditure. However, he did not produce any evidence in respect of the alleged family debts. No documents were placed on record by him for having spent any expenditure on his medical treatment. The Trial Court and the first Appellate Court have evaluated the evidence on record and have recorded a finding of fact that there was no legal necessity for Vishnu to alienate the suit properties. It must also be borne in mind that Vishnu has sold the suit properties in favor of his sons. Three out of the four Sale deeds have been executed just before the filing of the suit for partition on 17 August 1999 and the other Sale deed was executed during the pendency of the suit. I again do not find any reason for interfering in the finding of fact that there is absence of legal necessity to alienate the suit properties.

13) The last issue raised by Mr. Kulkarni is about the suit being barred by limitation *qua* the prayer for declaration of Sale deeds as void. So far as the Sale deed dated 27 November 2002 is concerned, the said objection is not maintainable as Suit is amended in 2003. The objection is raised in respect of the other three sale deeds of 7 June 1999, 24 June 1999, and 30 September 1999. It appears that after acquisition of knowledge of

said Sale deeds, Suit was amended on 1 July 2003. The Trial Court has repelled the objection of limitation by holding that the knowledge of the execution of Sale deeds was acquired by Plaintiffs during the pendency of the suit. The Trial Court has also relied upon the revenue entries pertinent to the years 1998 and 1999 (before filing of suit) which reflect names of Defendant Nos. 3 and 4 as owners of the suit property. The period of limitation has been computed in the present case from the date of acquisition of knowledge of execution of the Sale deeds. Here again, no serious flaw can be found in the Orders passed by the Trial Court and the first Appellate Court.

14) After considering the overall conspectus of the case, I am of the view that no substantial question of law is involved in the present Appeal. The Appeal is accordingly **rejected**, without any Orders as to costs.

15) In view of the disposal of the Second Appeal, Civil Application No.767 of 2018 and Interim Application No.144 of 2024 do not survive and the same are also disposed of.

[SANDEEP V. MARNE J.]