

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 426 OF 2019
WITH
CIVIL APPLICATION NO. 970 OF 2019**

Sarjerao Ramkrishna Jadhav-Uplani

} **...Appellant**
(Orig. Defendant No.3)

: Versus :

Vatsala Vijay Pawar and Ors.

} **..Respondents**

Mr. Surel Shah a/w. Mr. Pawar Nikhil Narendra, for the Appellant.

Mr. Umesh Mankapure a/w. Ms. Stefy J. Dias, for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

Dated : 6 May 2024.

P.C. :

1) By this Appeal, the Appellant challenges the Decree dated 30 August 2018 passed by the District Judge-3, Islampur in Regular Civil Appeal No. 67 of 2013 by which the First Appellate Court has partly allowed the Appeal filed by the Plaintiff and has granted 1/3rd share to the Plaintiff in the suit properties. Earlier, the Trial Court while partly decreeing the suit vide Decree dated 30 April 2013 had granted 1/3 share to the Plaintiff in the share of Defendant No.1 (father) in the land properties and 1/9th share in the house property. The first Appellate Court, while allowing Trial Court's Decree, has now granted 1/3rd share to the Plaintiff in the entire suit properties.

2) I have heard Mr. Shah, the learned counsel appearing for the Appellant and Mr. Mankapure, the learned counsel appearing for Respondent No.1 (original plaintiff).

3) Mr. Shah has essentially contended that the Plaintiff neither pleaded nor proved before the Trial Court that the suit property is of a Hindu coparcenary or that she had a share as a co-parcener. He would submit that the suit property was succeeded by Defendant No.1-father through his adoptive mother and in absence of availability of three lineal descendants, there was no Hindu coparcenary, which is a requirement for seeking share by the daughter under amended provisions of Section 6 of the Hindu Succession Act. In support of his contentions, Mr. Shah has relied upon judgment of the Apex Court in **Vineeta Sharma Versus. Rakesh Sharma and Ors.**¹

4) Another contention raised by Mr. Shah is that the suit properties were partitioned in the year 2004 under the provisions of Section 85 of the Maharashtra Land Revenue Code. That at the time when the partition took place, admittedly the Plaintiff did not have any right. That as per Proviso to Section 6, it is impermissible to open the partition so effected for the purpose of granting share to the married daughter. He would submit that a partition effected in accordance with law under Section 85 would also be covered in the exception carved out to Proviso to Section 6 of the Hindu Succession Act.

5) I have considered the submissions canvassed by Mr. Shah. Firstly, the fine distinction that is sought to be raised about absence of Hindu

¹ (2020) 9 SCC 1

coparcenary by Mr. Shah is difficult to accept. It is an admitted case that the property is not a self-acquired property of Defendant No.1-father. He succeeded the same through his adoptive mother. What the Apex Court has observed in paragraphs-22 and 23 of the judgment in *Vineeta Sharma* (supra), is about the point of time at which a partition can be sought. However, there is nothing in the judgment to suggest that there is a distinction between a joint family property and property of a Hindu coparcenary. Even if such distinction exists, in my view, there is nothing in the present case to indicate that the suit property is not the property of a Hindu coparcenary. It is admittedly not a self acquired property of Defendant No.1, who has inherited the same. Daughter's share in such inherited property cannot be frustrated on such specious plea of absence of Hindu coparcenary.

6) So far as the second aspect about partition is concerned, the Proviso to sub-section (1) of Section 6 read with Explanation to sub-section (4) would indicate that only the partitions which are registered or effected by Decree of Court are protected. In the present case, admittedly the partition of 2004 is neither registered nor effected by the Decree of any Court. Though Mr. Shah has taken me through the observations of the Apex Court in para-135 of judgment in *Vineeta Sharma* in support of his contention that a cogent, impeccable and contemporaneous evidence in the form of public document can be accepted for partition within the meaning of sub-section (1) of Section 6, in my view, the partition effected in the present case between the father and his two sons, specifically for excluding the daughter/Plaintiff, cannot be excepted within the meaning of the said Proviso. In any case, Plaintiff challenged the said partition by seeking a prayer that the same was

not binding on her share. Even the plea of limitation sought to be raised by Mr. Shah in respect of challenge to the said partition cannot be entertained in view of the mere declaration sought by the Plaintiff that the said partition does not have any effect on her share.

7) Considering the overall conspectus of the case, I am of the view that no substantial question of law is involved in the Second Appeal. The Second Appeal is **rejected**.

8) With rejection of the Appeal, Civil Application taken out for stay does not survive. The same also stands disposed of.

9) After the order is pronounced, Mr. Shah would pray for extension of interim relief granted by this Court by order dated 6 December 2021. The request is opposed by Mr. Mankapure. Considering the fact that interim relief is operational for a considerable period of time, the same is extended by a period of 8 weeks from today.

[SANDEEP V. MARNE, J.]

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