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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 492 OF 2024
WITH
CIVIL APPLICATION NO. 1432 OF 2017
IN
SECOND APPEAL NO. 492 OF 2024

Shankar Babugonda Patil (deceased ... Appellants/Applicants
thr. Lrs 1. Sou. Vasanti Shankar Patil
and Ors.)

vs.

Kalagonda Babugonda Patil and Ors ... Respondents

Mr. Bhushan Walimbe a/w. Mr. Mayank Tripathi, for Appellants.

Mr. N.B. Khaire, for Respondent No. 2 B.

Mr. Chetan Patil i/b. Mr. Mandar G. Bagkar, for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 2nd SEPTEMBER 2024

ORDER:

1. Heard learned counsels for the parties. Second Appeal is admitted on the following substantial questions of law:

I) Whether in the absence of clear findings that the suit property at serial no.7 was purchased by defendant no. 1 out of his independent source of income, the trial court's findings

granting partition and separate possession in respect of the said property, could have been reversed by the First Appellate court?

II) When there was no dispute that there was a joint family of the parties, whether the burden to prove that the suit property at serial no. 7 was purchased by defendant no.1 out of his independent source of income could have been casted upon the plaintiff?

III) When there was no dispute that there was a joint family between the parties and other suit properties were belonging to the joint family, whether it was the burden on defendant no.1 to prove that the suit property at serial no.7 were purchased out of his independent source of income.

IV) Whether the plaintiff's case with regard to the suit property at serial no. 7 being a joint family property is covered by the legal principles settled by the Hon'ble Apex Court in the case of *Adivappa and Ors Vs. Bhimappa and Anr*¹

V) Whether in view of legal principles settled by the Apex Court in the case of *D.S. Lakshamaiah and Anr Vs. L. Balasubramanyam and Anr*² the burden to prove the suit

1 (2017) 9 SCC 586.

2 (2003) 10 SCC 310

property at serial no.7 was on the plaintiff that it was a joint family property though purchased in the name of defendant no.1?

2. Mr. Khaire, waives notice on behalf for respondent nos. 2B and Mr. Patil waives notice on behalf of respondent no.1.

3. In addition to Court notice, the learned advocate for the appellants to serve the remaining respondents, by private notice and file affidavit of service.

4. Call for records and proceedings.

5. Printing is dispensed with.

6. Learned advocate for the appellants shall file private paper-book within a period of one year from today.

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7. Rule on interim relief in terms of prayer clause (a) is made returnable after ten weeks. Till next date no third party interest be created in respect of suit property at serial no.7.

8. It is clarified that there is no stay to the decree for partition and separate possession in respect of other suit properties.

9. Mr. Khaire, waives notice on behalf for respondent nos. 2B

and Mr. Patil waives notice on behalf of respondent no.1.

10. In addition to Court notice, the learned advocate for the applicants to serve the remaining respondents, by private notice and file affidavit of service, before the next date.

(GAURI GODSE, J.)