



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 282 OF 2018

Gangadhar S/o Mahadev Shejole (Dead)
through his Legal Representatives :

(Original Plaintiff)

- 1) Smt. Lata Wd/o Gangadhar Shejole,
Aged about 72 years, Occ.- Agriculturist,
- 2) Kailash S/o Gangadhar Shejole,
Aged about 44 years, Occ.-Agriculturist,
Both R/o. Talegaon (Wadner),
Tah. Telhara, Dist. Akola.

.... **APPELLANTS**

// VERSUS //

- 1) Smt. Subhadrabai Wd/o. Ramrao Shejole,
Aged about 66 years, Occ.-Household,
- 2) Nilkantha S/o Ramrao Shejole,
Aged about 49 years, Occ.-Private Service,
R/o. Dabki Road, Near Deshmukh Samaj
Mangal Karyalaya, Akola,
Tq. and Dist. Akola.
- 3) Vinayak S/o Ramrao Shejole,
Aged about 36 years, Occ.-Agriculture,

No.1 and 3 R/o. Talegaon (Wadner),
Tq. Telhara, Dist. Akola.
- 4) Suresh S/o Ramrao Shejole
Since deceased through L.Rs.
- 4A) Mandatai Wd/o Suresh Shejole,
Aged about 55 years, Occ.-Agriculture,
- 4B) Mangesh @ Jagdish S/o Suresh Shejole,
Aged : Mior, Occ.-Nil.

- 4C) Ganesh S/o Suresh Shejole,
Aged Minor, Occ.-Nil,
Both 4B and 4C through legal
Guardian mother
Mandatai Wd/o Suresh Shejole,
R/o. Gaulkhed, Post. Khedra,
Tq. Shegaon, Dist. Buldhana.
- 5) Keshav S/o Ramrao Shejole,
(Dead through LRs.)
- 5A) Shardatai Wd/o Keshav Shejole,
Aged about 45 years, Occ.-Housewife,
- 5B) Sham S/o Keshav Shejole,
Aged about 25 years, Occ.-Agriculturist,
- 5C) Avinash S/o Keshav Shejole,
Aged about 23 years, Occ.-Agriculturist,

No.5A to 5C, R/o. Gaulkhed, Post Takli Viro,
Tq. Shegaon, Dist. Buldhana.
- 6) Shriram S/o Mahadev Shejole,
(Since deceased through LRs.)
- 6(1) Dashrath Shriram Shejole,
(Since deceased through his LRs.)
- 6(1-i) Smt. Mangala Dashrath Shejole,
Aged about 50 years, Occ.-Nil,
R/o. Talegaon Wadner, P.S. Adsul,
Tq.Telhara, Dist. Akola.
- 6(1-ii) Sau. Shradha Santosh Mangte,
Aged about 25 years, Occ.-Nil,
(after marriage)
Sau. Sharda W/o Shankar Kadu,
R/o. Pilkwadi, Post Chohotta Bazar,
Tq. Akot, Dist. Akola-444101.
- 6(2) Vishnu Shriram Shejole,
Aged about 48 years, Occ.-Nil,

- 6(3) Dnyaneshwar Shriram Shejole,
Aged about 47 years, Occ.-Nil,
- 6(4) Shankar Shriram Shejole,
Aged about 45 years, Occ.-Nil,
No.6(2) to 6(4) R/o. Talegaon-Wadner,
Tq. Telhara, Dist. Akola.
- 7) Tribhuvan S/o Mahadev Shegole,
(Since Deceased through LR.)
- 7(1) Sunderabai Tribhuvan Shejole,
Aged about 58 years, Occ.-Household,
- 7(2) Sanjay Tribhuvan Shejole,
Aged about 35 years, Occ.-Agriculture,
- 7(3) Gokuldas Tribhuvan Shejole,
Aged about 30 years, Occ.-Agriculture,
No.7(1) to 7(3) R/o. Talegaon(Wadner),
Tq. Telhara, Dist. Akola.

.... **RESPONDENTS**
(Original Defendants)

Mr. Anil Mardikar, Senior Advocate assisted by Mr. Ved
Deshpande, Advocate for Appellants.

Mr. A. J. Thakkar, Advocate for Respondent Nos.4(C) & 5(B).

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 18.09.2024.

DATE OF PRONOUNCING THE JUDGMENT : 19.12.2024.

JUDGMENT.

1. This second appeal is preferred against the judgment and decree passed by the Adhoc District Judge-2, Khamgaon, District Buldhana in Regular Civil Appeal No.40/2010, dated 30.01.2018. The said appeal was preferred against the judgment and decree

passed by the Civil Judge, Junior Division, Shegaon, District Buldhana in Regular Civil Suit No.54/2004, dated 23.04.2010. The suit and appeal were dismissed.

2. **Plaintiff's case :**

(i) The plaintiff filed a suit for partition and separate possession of his share in the properties bearing (i) Gat No.81, field Survey No.22/3B, admeasuring 1.21 HR., (ii) Gat No.83, Survey No.22/3A, admeasuring 1.21 HR., (iii) Gat No.26, Survey No.6/1A, admeasuring 3.96 HR., out of which 1.16 HR. (iv) Gat No.228, Survey No.64/1, admeasuring 1.07 HR., out of which 1H. (v) Gat No.129, Survey No.37/1B including a Well and Survey No.37/3, admeasuring 3.83 HR. along with house properties viz. House Nos.86, 89, 97, situated at village Gaulkhed, Tahsil Shegaon, District Buldhana, which are the subject matter of the suit.

(ii) The plaintiff contended that he had three brothers, Ramrao – defendant No.1, Shriram – defendant No.4 and Tribhuvan – defendant No.5. His father effected a partition of the joint family properties on 01.12.1969, by a registered Partition-deed. The suit properties were allotted to the share of his father Mahadev. His mother Dwarkabai was not given any share in that partition. In the partition-deed, it was mentioned that after the death of Mahadev,

Dwarkabai would possess the suit properties and she will have the right to enjoy the suit properties till her life but she could not dispose of it.

(iii) After the death of Dwarkabai, the suit properties will have to be divided between the plaintiff and his brothers equally. Late Dwarkabai died in the year 1993. Therefore, the plaintiff demanded a partition of his share in the suit properties from the defendant Nos.1 to 3 but, they refused to effect the partition. The plaintiff further contended that late Dwarkabai did not have the right to dispose of the suit properties. However, she executed a Will of the suit properties in favour of defendant No.1 and her daughter Mathurabai. It is contended that the said Will is not legal and binding on the plaintiff and defendant Nos.4 and 5, as the Dwarkabai did not have exclusive right over the suit properties. Therefore, the plaintiff filed suit for partition of his share in the suit properties.

3. **Defence of the Defendants :**

(i) The defendant Nos.1 to 3 resisted the suit. They admitted the earlier partition-deed dated 1.12.1969 and their relationship *inter se*. They came with the case of execution of a Will, registered in favour of defendant No.1 and Mathurabai. Accordingly, after the death of Dwarkabai, the mutation entries of the suit properties are

effected. It is lastly prayed that suit is not maintainable, as the plaintiff has no legal right to file it. The defendants further prayed for the dismissal of the suit.

(ii) The defendant Nos.4 and 5 admitted their relationship, the execution of partition deed of the year 1969 and supported the plaintiff's claim. They also prayed for their share in the suit properties.

4. The learned Trial Court held that, the plaintiff has no right in the suit properties. The defendants have proved a Will, executed in favour of defendant No.1 and Mathurabai. Consequently, the suit was dismissed. The learned First Appellate Court also held that judgment and decree passed by the Trial Court is legal and correct and no interference is warranted in it and dismissed the appeal.

5. The following substantial question of law is formed :

“Was the Trial Court as well as First Appellate Court illegal and incorrect in applying Section 14(1) instead of applying Section 14(2) of the Hindu Succession Act, 1956 to the case of the plaintiff?”

6. Heard learned Advocate for both sides.

7. The learned Senior Counsel Mr. Anil Mardikar, for the appellants submitted that Sub-section(2) of Section 14 of the Hindu Succession Act, 1956 (for short the “H.S. Act”) is applicable to the case in hand. He submitted that late Dwarkabai was limited owner and she is bound by the partition-deed. Therefore, she did not have the right to execute a Will in favour of defendant No.1 and Mathurabai. The learned Senior Counsel for the appellants further submitted that partition-deed is an undisputed document, therefore, its contents and particularly the terms restricting the right of Dwarkabai are binding on the defendants. Her interest in the suit properties, as per Partition-deed Exhibit-36, is limited for her life. She did not have any pre-existing right in the suit properties, either when the partition was effected or when the alleged Will was executed. The plaintiff and defendants are bound by the terms of said Partition-deed Exhibit-36. The learned Senior Counsel for the appellants had relied upon the following precedential laws of ***Sadhu Singh Vs. Gurdwara Sahib Narike & Ors.***, reported in ***(2006) 8 SCC 75***, wherein the Hon’ble Supreme Court held that widow has right of maintenance got as per instrument or decree of the Court till her life.

8. The learned Senior Counsel for the appellants, therefore, submitted that the appeal be allowed by setting aside the impugned judgments of both the Courts.

9. The learned Advocate for the respondent Nos.4(B) and 5(C) submitted that, after the passing of Hindu Succession Act, 1956 as per Section 14(1), if Hindu widow acquires any property, regardless of how it is acquired, that property become her absolute property and she can dispose of it, as per her choice. He submitted that, therefore, the Will executed by the Dwarkabai is legal and correct and, therefore, the learned Trial Court as well as the learned First Appellate Court, rightly held that Dwarkabai was the absolute owner of the suit properties, as per terms of the partition-deed and hence, a Will is also valid. He submitted that reasons and findings of the learned Trial Court and the learned First Appellate Court are neither illegal nor perverse and, therefore, it is lastly prayed that the appeal be dismissed, as there are concurrent findings in favour of the defendants. He is relying upon following precedential laws :

(i) ***Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna & Ors.***, reported in ***(2016) 2 SCC 56***, in which it was held that, “property given to the Hindu women in lieu of her pre-existing right of maintenance, even if by will creating only life interest, same would get transformed into absolute property by operation of Section 14(1) of the H.S. Act”.

(ii) ***V Tulasamma & Ors., Vs. Sessa Reddy (Dead) By Lrs.,*** reported in ***(1977) 3 SCC 99***, wherein it was held that, “Section 14(1) of the H.S. Act, applies to the properties granted to the female Hindu by virtue of pre-existing right of the maintenance and Section 14(2) of the H.S. Act, applies when properties granted to female Hindu for the first time without any pre-existing right”.

10. The learned Advocate for the respondents lastly prayed to dismiss the appeal as late Dwarkabai was absolute owner of the suit properties and had every right to dispose of it by a Will.

11. Perused the impugned judgments and record and proceedings.

12. A Partition-deed Exhibit-36 and relations between the plaintiff and defendants are admitted facts. The partition-deed clearly states that after the death of Mahadev, Dwarkabai would possess the suit properties. However, there are restriction in the Partition-deed Exhibit-36 which states that Dwarkabai could not transfer that properties to anyone and after her death, suit properties will be divided between the plaintiff and defendants.

13. There is a distinction between Section 14(1) and 14(2) of the H.S. Act. The Section 14(1) states that, “any property possessed by a Hindu female, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner”. In the present case, late Dwarkabai acquired the suit properties as per the Partition-deed Exhibit-36. The explanation to the Sub-section (1) of Section 14 of the H.S. Act clarifies that, “property” includes both movable and immovable property acquired by a Hindu female by inheritance or devise, or at a partition, or in lieu of maintenance or on arrears of maintenance, or by gift from any person etc. or in any other manner whatsoever, and also any such property held by her as ‘stridhana’ immediately before the commencement of this Act” will be her absolute property. The explanation to the Sub-section (2) of Section 14 of the H.S. Act says that, “Sub-section (1) of Section 14 of the H.S. Act will not apply to any property acquired by way of gift or will or any other instrument or under a decree or order of a civil court or under an award, where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

14. As per law laid down by the Hon’ble Apex Court in the cases of *Jupudy Pardha Sarathy* and *V. Tulasamma* cited supra, that

the properties given to the Hindu female in lieu of her pre-existing right of maintenance and where only a life interest is created by a Will, the said property would transform into absolute right by operation of Section 14(1) of the H.S. Act. No doubt, the facts of the case are decisive. In the present case, there are restrictions stated in the Partition-deed Exhibit-36, as discussed above. However, at the time of partition, late Dwarkabai did not receive any share in the suit properties and other properties. The share of her husband, late Mahadev was carved out, therefore, Dwarkabai was entitled for possession of the suit properties after the Mahadev's death. The restriction on the suit properties as per the Partition-deed Exhibit-36 are contrary to the provisions of Section 14 of the H.S. Act, which states that properties acquired by partition in lieu of maintenance shall be treated as her property and she becomes the full owner of it. Therefore, Sub-section (2) of Section 14 of the H.S. Act is not applicable to the present case. The object of Section 14 of the H.S. Act is to confer a widow an absolute right in the property. It cured the legal mischief of providing of limited right to the widow.

15. Even if, it is assumed that Dwarkabai did not have a right to execute a Will as per Section 6 of the H.S. Act(old), she still had the right of succession in the suit properties. It is further noticed that,

the sister of plaintiff Mathurabai was not made the party in the suit. Therefore, suit is also bad for non-joinder of necessary party. The learned Trial Court has rightly observed that law point in the para 18 of the impugned judgment. The learned First Appellate Court also held that late Dwarkabai was full owner of the suit properties and, therefore, she has right to execute the Will in favour of defendant No.1 and her daughter Mathurabai. It is also observed that, at the time of execution of Partition-deed Exhibit-36, late Dwarkabai had the right to claim her share in the suit property, as her sons were claiming/getting partition. Thus, her pre-existing right to maintenance in the suit properties was in existence as per law laid down by the Hon'ble Apex Court in case of *V. Tulasamma* cited supra.

16. If all these aspects are considered together, there is no substance in the legal contentions raised in this appeal. Therefore, the argument put forth by the learned Senior Counsel for the appellants is not accepted in this regard. The authority of *Sadhu Singh* cited by the appellants is also not applicable as the fact in this case are different from the case in hand. In that case, a life interest was granted to the widow in lieu of her maintenance. The Will was decisive. In the case in hand, late Dwarkabai was having pre-existing right of maintenance and she acquired the suit properties by the

Partition-deed Exhibit-36 and possessed those properties. Therefore, the plaintiff is not entitled for the partition in the suit properties. Hence, the substantial question of law is answered in the “negative”.

17. The appeal being devoid of merits and deserves to be dismissed. The appeal is **dismissed**. No costs.

(SANJAY A. DESHMUKH, J.)

Kirtak