



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

Second Appeal No.469 of 2023

Manik s/o Bijaram Satkar and others

vs.

Sushila w/o Sureshrao Wane and others

***Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.***

Court's or Judge's Orders

***Mr. Kamal Gour, Advocate for the Appellants.
None for the Respondents.***

CORAM : M.W. CHANDWANI, J.
DATE : 8th OCTOBER, 2024.

Heard the learned Counsel for the appellants. Nobody appeared on behalf of the respondents.

02. This second appeal has been filed against the judgment and decree passed in R.C.A. No.110/2017, whereby the first appellate Court reversed the decree of dismissal of suit for partition filed by Smt. Narmadabai Vithobaji Moon, who was the original plaintiff No.1 and the present respondent No.8-Reshmabai.

03. Late Chindu Satkar left behind him an agricultural field bearing Survey No.5/1, situated at Mouza Neri, Tahsil and District Wardha. Deceased Narmadabai and respondent No.8 are the daughters and deceased-Bijaram Satkar is the son of Chindhu. After the death of Chindhu, the suit property was mutated in the name of deceased Bijaram, Narmadabai and Reshmabai. Narmadabai and Reshmabai filed a suit against Bijaram for partition and separate possession. When the suit was filed, Bijaram was not alive and therefore, the present appellants were added as defendants in the said suit.

04. In the suit as well as the written statement, the suit property was claimed as an ancestral property. However, during

evidence, the present appellants came up with a case that the suit property was a self-acquired property of late Chindhu and there was a partition between late Chindhu and his son Bijaram. Narmadabai admitted that there was a partition and the trial Court dismissed the suit on the premise that the suit property has already been partitioned.

05. In the appeal filed against the said judgment, the first appellate Court reversed the decree of dismissal of suit on the premise that there was no document available in respect of the previous partition. The 7/12 extract of the suit property bears the name of Narmadabai, Reshmabai and Bijaram. No relinquishment-deed has been executed and on that premise, the appeal came to be allowed and the appellate Court passed the decree declaring that Narmadabai and Reshmabai are having $\frac{1}{3}^{\text{rd}}$ share in the suit property. Feeling aggrieved with the said decree, the second appeal came to be filed.

06. It appears that on one hand, the suit property was claimed as an ancestral property and on the another hand, it has been claimed as a self-acquired property by the appellants. Be that as it may, the fact remains that at the time of his death, Chindhu left the suit property. The relationship amongst Narmadabai, Reshmabai and Bijaram is not in dispute. Though, there may be an admission regarding partition of the suit property, but no specific details have been brought on record to show that the suit property was partitioned earlier amongst Narmadabai, Reshmabai and Bijaram. Even otherwise, the fact remains that appellant-Manik has admitted that no immovable property was given to Narmadabai and Reshmabai in the partition. Thus, no partition amongst deceased Narmadabai, deceased Bijaram and Reshmabai is effected till date. In wake of the amendment to Section 6 of the Hindu Succession Act, 1956, whereby, daughters are also treated at par with the sons, it hardly makes any difference whether the suit property is an ancestral or a self-acquired property of Chindhu. In both the cases, Narmadabai and Reshmabai will get equal

share. Therefore, the appellate Court has rightly held that Narmadabai and Reshmabai have 1/3rd share in the suit property.

07. In view of the above, no substantial question of law arises in this appeal. Hence, the appeal fails and it is dismissed. There shall be no order as to costs.

JUDGE

***sandesh**