



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

Second Appeal No. 325 of 2013

[Natthu s/o Ganpatrao Pachghare ..vs.. Sau. Babytai W/o Kisanrao Bodakhe]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C. A. Babrekar, Advocate for the appellant
Mr. A. R. Wagh, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 11-12-2024

The appeal has been admitted on following substantial question of law.

Whether sister could have filed suit for share on partition in respect of the self-acquired property of the brother in the absence of proof that her brother had acquired the property out of income from the ancestral property ?

2. The appellant has filed Civil Application No. 287/2013 seeking permission to produce additional evidence i.e. sale deeds in support of his case that subject matter of the properties were self acquired properties. As such, along with the application, no sale deed has been filed, however, learned counsel was called upon to show across bar the sale deeds as mentioned in the application. The sale deeds which have been shown relate to properties situated at Mouje Degaon, District Amravati. The suit properties, however, are situated at Mouje Borgaon, District Amravati. Further, the suit properties bears Survey Nos. 123 and 31. The survey numbers in the sale deeds are 82/1 and 82. Thus, these

sale deeds, even if, allowed to be produced, will be of no help to the appellant.

3. There exist yet another property being agricultural field being Gat No. 12 admeasuring 0.81 HR at Mouje Degaon. The sale deed shown is pertaining to Gat No. 11/2. Learned counsel for the appellant submits that though Gat Number is mentioned as 11/2, the appellant had purchased 0.81 HR out of the total area and, later on, this portion i.e. area admeasuring 0.81 HR was given Gat No. 12. Learned counsel has shown across the bar the copy of 7/12 extract. It however, shows that the appellant had purchased agricultural land admeasuring 0.81 HR out of land admeasuring 4.85 HR from Gat No. 12. Thus, there is variance in area belonging to Gat Nos. 11/2 and 12. The sale deed which is shown bears Gat No. 11/2 and not Gat No. 12. It is, thus, difficult to connect the sale deed with Gat No. 12. Put altogether, even if, permission is granted to appellant to produce the sale deeds, no fruitful purpose will be served. The application is accordingly rejected.

4. On merit, learned counsel for the respondent has invited my attention to the evidence of the appellant. In chief-examination, the appellant has nowhere disclosed or stated that he has purchased agricultural land admeasuring 0.81 HR out of Gat No. 12 from his own pocket. Further, he admits in the cross-examination that since the year 1987, the year of death of his father, he is generating funds out of income from the ancestral properties. He has then denied the suggestion that

property bearing Gat No. 12 was purchased out of the income from ancestral property.

5. Thus, the respondent has put up a case that the aforesaid property has been purchased out of funds generated from the ancestral property. The respondent has also brought on record that appellant was getting income from the ancestral property. In the chief-examination, the appellant does not say that he has purchased the suit property out of independent income. There is, thus, neither documentary evidence nor oral evidence to support the theory of appellant that the subject matter of the properties were his self acquired properties.

6. In the circumstances, the respondent - sister was fully justified in filing suit seeking her share in respect of the properties which were though cultivated by her brother - appellant, was an ancestral property. As regards proof of income from ancestral property, as stated above, the evidence of appellant is writ large on the point that he has no independent funds to acquire the property and that he was generating funds out of the ancestral properties. The substantial question of law is answered accordingly.

7. Resultantly, there is no substance in the appeal. The appeal is dismissed.

(Anil L. Pansare, J.)