



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

SECOND APPEAL NO. 562 OF 2018

APPELLANTS
(Ori. Defts. On R.A.)

- : Bapurao Ramaji Jamdapure through
LRs
1. Smt. Sulochana Wd/o Bapuraoji
Jamdapure,
aged about 55 yrs, Occ. Household,
 2. Praful Bapuraoji Jamdapure,
aged about 33 years, Occ. Cultivator,
 3. Ku. Ujwala Bapuraoji Jamdapure,
aged about 29 years, Occ. Household
(Maiden name) and now
Sau. Ujwala W/o Pravin Jadhav name
after marriage,
R/o. Suryadev Nagar, Radhakrushna
Nagar, Lohara By-pass Road, Tq. And
Distt.Yavatmal.
 4. Pravin Bapuraoji Jamdapure,
aged about 30 years, Occ. Cultivator,
 5. Amit S/o Bapuraoji Jamdapure,
aged about 27 years, Occ.Cultivator,
 6. Datta Bapuraoji Jamdapure,
aged about 22 years, Occ. Cultivator,
Nos. 1 to 6 are R/o. Murli, Tq.
Ghatanji, Distt. Yavatmal.
(The Appellants no. 1 to 6 are the
legal heirs/ representatives of the
Ori. Deft. no.1 deceased Bapurao
who died during pendency of the
Civil Suit, as a body of his unit)
 7. Sau. Tarabai W/o Deoraoji Gawande,
aged about 65 years, Occ. Household,
R/o. Akhada Ward, Pandharkawada,
Tq. Kelapur, Distt. Yavatmal

8. Sau. Anita Amrutrao Bhoyar,
aged about 62 years, Occ. Household,
R/o. Both (Bahatar),
Tq. Kelapur, Distt. Yavatmal.
9. Smt. Meebnabai W/o Ashokrao Dafle,
aged about 47 years, Occ. Household,
R/o. Shyam Society Sankat Kochan
Road, Yavatmal,

//VERSUS//

RESPONDENTS
(Ori. Plffs. On RA)

(Ori. Deft. No.1)

1. Sau. Sanjivani Anilrao Choudhari,
aged about 30 years, Occ. Household,
R/o. C/o. Anilrao Hanumantrao
Choudhari, Sawangi (Marg),
Tah. Babhulgaon, Distt. Yavatmal.
2. Smt. Kamla wd/o Bapuraoji
Jamdapure, aged about 57 years, Occ.
Household, R/o. C/o. Shrikrushna
Domaji Bhoyar, village Inzale, Tq.
Ghatanji Distt. Yavatmal

Mr. A.V. Bhide, Advocate for the Appellants.

Mr. P.S. Kadam, Advoate for respondent Nos.1 and 2.

CORAM : G. A. SANAP, J.

DATED : FEBRUARY, 22 2024

ORAL JUDGMENT

In this second appeal, the challenge is to the judgment and decree dated 20.06.2018 passed by learned District Judge Yavatmal, whereby the appeal filed by the appellants against the judgment and decree dated 13.09.2013 passed by the learned Civil

Judge Junior Division, Ghatanji, was partly allowed and the shares of the plaintiff and defendants determined by the trial Court were modified.

2. In this second appeal, the notice was issued on the following substantial questions of law:-

“(i) Whether the suit property in the present case was ancestral property of Bapurao Jamdapure and in that light whether the decree passed by the Courts below is sustainable?

(ii) Whether the Appellant Court ought to have remanded the matter to the Trial Court for framing an additional issue on the legality and validity of the alleged Will executed by Bapurao on 19.06.2006?

(iii) Whether the finding rendered by the Appellate Court that the aforesaid Will executed by Bapurao is shrouded with suspicion, is a perverse finding?

(iv) Whether the shares allotted to the appellants by the Appellate Court treating them as illegitimate

children of Bapurao are sustainable in the eyes of law?"

3. Background facts:

Appellant Nos.1 to 6 are the original defendant Nos.1-B to 1-G. Appellant No.7 is the original defendant No.2. Appellant No.8 is the original defendant No.3 and appellant No.9 is the original defendant No.4. Respondent No.1 is the original plaintiff No.1. Respondent No.2 is the original defendant No.1A. Respondent No.2 is the mother of respondent No.1. Respondent No.2 is the first wife of the deceased Bapuraoji. Appellant No.1 is the second wife of the deceased Bapuraoji. Appellant Nos. 2 to 6 are the children begotten from appellant No.1. Appellant No.7 to 9 are the sisters of Bapuraoji.

4. Respondent No.1 filed the suit for partition and separate possession of the share in the land bearing survey Nos.198 and 199, more particularly described in the plaint. Respondent No.1 did not claim any right in the house property. According to her, she, being the daughter begotten from the first marriage of Bapujirao with respondent No.1 - Sau. Kamla Bapuraoji Jamdapure, is entitled to get $\frac{1}{5}$ th share in survey No.198 and $\frac{1}{2}$ share in survey No.199. According to respondent No.1, appellant No.1 being the second wife and appellant Nos.2 to 6 being the

illegitimate children of the deceased Bapuraoji are not entitled to get equal share in the property.

5. During the pendency of the suit, Bapuraoji died and appellants were brought on record. According to the deceased Bapuraoji, appellant No.1 was his first wife and respondent No.2 was his second wife. The appellants contended that appellant No.1 being the legally wedded wife of deceased Bapuraoji, they are entitled to get $\frac{1}{2}$ share in the entire suit property.

6. In order to substantiate the rival contentions, the parties adduced evidence. Learned Judge of the Trial Court by judgment and decree dated 13.09.2013, partly decreed the suit and determined their shares. Clause Nos.2, 3 and 4 of the operative part of the judgment are relevant for this purpose and as such the same are extracted below:-

“ii) It is declared that the plaintiff and defendant No.1-A have $\frac{5}{24}^{th}$ and defendant No.1-C to 1-G amongst all have $\frac{5}{24}^{th}$ and defendant No.2 to 4 have $\frac{1}{8}^{th}$ share in the suit property in Survey No.198.

iii) It is declared that the plaintiff and defendant No.1-A have $\frac{1}{3}^{rd}$ and defendant No.1-C to 1-G

amongst all have 1/3rd share in the property in Survey No.199.

4. It is declared that the partition amongst the defendants No.1 and 1-B to 1-G is cancelled.”

7. Being aggrieved by the judgment and decree, the appellants filed the appeal in the District Court, Yavatmal. District Court, Yavatmal, partly allowed the appeal. The shares determined and allotted the shares are in terms of clause Nos.(II) to (V) of the operative part of the order. The same are extracted below:-

“II) It is declared that the plaintiff, defendant No.1-A and defendants Nos.1-C to 1-G each are having 1/28 share and the defendants Nos.2 to 4 each are having 1/4th share in the survey No.198 of mouza Murali.

III) It is declared that the plaintiff and defendant No.1-A each are having $1/3rd + 1/21 = 8/21$ share and defendant Nos.1-C to 1-G each are having 1/21 share in the survey No.199 of mouza Murali.

IV) The clause no.1, 2, 3 and 7 of judgment and Decree dated 13/09/2013 passed by Learned Civil Judge Jr. Div. Ghatanji in Reg. Civil Suit No.08/2007

are modified accordingly.

V) The clause no.4, 5, 6 of Judgment and Decree dated 13/09/2013 passed by Learned Civil Judge Jr. Div. Ghatanji in Reg. Civil Suit No.08/2007 are confirmed.”

8. Being aggrieved by this order passed by the District Court in appeal, the appellants have preferred this second appeal. The notices were issued to the respondents on the substantial questions of law as stated hereinabove.

9. I have heard learned Advocate for the appellants and learned Advocate for the respondents. Perused the record and proceedings.

10. Learned Advocate for the appellants submitted that the shares in the property determined by the Appellate Court are not in accordance with the law. Learned Advocate submitted that the appellants would be entitled to get ½ share in the entire property.

11. Learned Advocate for the respondent No.1 submitted that judgment and decree passed by the Appellate Court is in

accordance with the law.

12. It needs to be stated that the right claimed by the appellant Nos.1 to 6, on the basis of the will purported to have been executed by Bapuraoji has been denied. The will deed was produced for the first time as an additional affidavit before the Appellate Court. The Appellate Court has observed that the will deed was surrounded by suspicion circumstances. The Appellate Court discarding the will deed declined to grant any relief to the appellants on the basis of the will deed. The Courts below have concurrently held that respondent No.2 is the first wife of deceased Bapuraoji and respondent No.1 is the daughter of Bapuraoji begotten from respondent No.2. The Courts below have concurrently held that appellant No.1 is the second wife of Bapuraoji and appellant Nos.2 to 6 are illegitimate children of the deceased Bapuraoji. On going through the record and proceedings and particularly the reasons recorded by the Courts below, I do not see any reason to interfere with the concurrent finding of fact recorded on these aspects.

13. It needs to be stated that appellant No.1, being the second wife of the deceased Bapuraoji and appellant Nos.2 to 6

being the illegitimate children of deceased Bapuraoji would be entitled to get a share in the property of the deceased Bapuraoji. Respondent No.1, being the legitimate daughter of Bapuraoji and respondent No.2 being the first wife of Bapuraoji would be entitled to get equal share in the property with Bapuraoji and in the share of Bapuraoji depending upon the nature of property i.e. ancestral or self acquired. As far as the rights of the illegitimate children are concerned, the decision in the case of ***Revanasiddappa and another Vs. Mallikarjun and others*** reported in ***(2023) 10 SCC*** would be of immense assistance to address the issue. In this case, it is held that child born from void or voidable marriage is conferred legitimacy under Section 16 of the Hindu Marriage Act, 1955 but such child is not a coparcenar in the Hindu Mitakshara joint family. It is held that such child would be entitled to share of the parents in coparcenary property in accordance with mandate of Section 6 of the Hindu Succession Act, where the parents dies after the commencement of the Hindu Succession Act (Amendment) Act, 2005 w.e.f. 09.09.2005. It is held that the child conferred legitimacy under Section 16 the Hindu Marriage Act has right only in the exclusive and absolute property of the parents. Such a child cannot seek partition of the ancestral/joint family/coparcenary property in which parents have a share, during

lifetime of the parents. In my view, the issue involved in this appeal can be decided with the assistance of this principle of law.

14. For the purpose of determining the shares in the property, first and foremost the nature of the property in the hands of deceased Bapuraoji would be required to be considered. Exh.35 is the mutation entry, which shows that Vithabai the mother of deceased Bapuraoji and appellant No.7 to 9, died on 10.12.1998. The land survey No.198 was the absolute property of Vithabai Jamdapure, the mother of deceased Bapuraoji. After the death of his mother, survey No.198 devolved upon Bapuraoji and his three sisters, the appellant Nos.7 to 9 under Section 15 of the Hindu Succession Act, 1956. It therefore, goes without saying that Bapuraoji had $\frac{1}{4}$ share in survey No.198. Appellant Nos.7 to 9 were having $\frac{1}{4}$ share each in survey No.198. The $\frac{1}{4}$ share in survey No.198 devolved upon Bapuraoji became his separate property. Bapuraoji died intestate during the pendency of the suit. Respondent No.1, being the legitimate daughter and respondent No.2, being the first wife of Bapuraoji has a right in the property of Bapuraoji as per Section 8 of the Hindu Succession Act, 1956.

15. As per Section 16 of the Hindu Marriage Act, 1955 the

legitimacy has been conferred on appellant Nos.2 to 6 and therefore, they would have a share in the property equal to respondent No.1 and respondent No.2 in the separate property of Bapuraoji, i.e. land survey No.198. Undisputedly, Bapuraoji had $\frac{1}{4}$ share in survey No.198. His $\frac{1}{4}$ share would be divided amongst all seven legal heirs, namely respondent No.1 and 2 and appellant Nos.2 to 6. On calculation of the share, in survey No.198, they would be entitled to $\frac{1}{4}/7 = \frac{1}{28}$ share each in land survey No.198.

16. It would be necessary to consider the rights of the parties to get a share in survey No.199. Mutation Entry register Exh.37 produced on record is a very vital document. It shows that on 19.05.1976, there was a partition between Bapuraoji and his father and in the said partition, the land bearing survey No.199 was allotted to the share of Bapuraoji. It therefore, goes without saying that land survey No.199 became the joint family property of the deceased Bapuraoji. Bapuraoji had contended that survey No.199 was his self acquired property. However, the Courts below have concurrently held that the recitals of mutation entry register Exh.37 was sufficient to negative this contention. The Courts below held that in view of the allotment of survey No.199 to Bapuraoji in a partition with his father, the said property is a joint

family property. On going through evidence, I am satisfied that there has been no perversity in the findings. In this background, the shares in the property of the appellants and the respondents have been determined by the learned District Judge. In my opinion, if the nature of the property left by Bapuraoji is considered, it would show that there was no perversity in the finding recorded by the Appellate Court. There is no evidence to interfere with the finding of fact *vis-a-vis* the nature of the property in the hands of the deceased Bapuraoji. As such, I conclude that there was no error, mistake, as well as perversity in the decision rendered by the Appellate Court. Accordingly the question No.1 is answered in the affirmative. The question No.2 is answered in the negative. The question No.3 is also answered in the negative. The question No.4 is answered in the affirmative. As a result of this, I do not see any substance in the appeal.

17. Second Appeal is accordingly **dismissed**. No order as to costs. Pending applications, if any stand disposed of.

(G. A. SANAP, J.)

