



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

SECOND APPEAL NO. 492 OF 2022

Vinod S/o. Madhukar Bhoyar and others
.VS.

Vinay Pandurang Bhoyar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr V. U. Waghmare, Advocate for the appellants
Mr Anil Dhawas, Advocate for respondent Nos. 1, 3, 4 to 6

CORAM : G.A. SANAP, J.

DATE : JANUARY 08, 2024.

Heard learned Advocate for the parties. Perused
the record and proceedings.

2. In this second appeal, filed by the original
defendants, the challenge is to the judgment and order
dated 01.09.2022 passed by the learned District Judge-1
Warora, Distt. Chandrapur. By this Judgment and order,
the learned District Judge-1 was pleased to confirm and
maintain the judgment and decree dated 25.07.2014
passed by the learned Civil Judge (Jr. Dn.) Bhadrawati
whereby the suit for partition was decreed.

3. In this second appeal, the notice was issued to the respondents on following substantial question of law.

“Whether both the Courts below were justified in holding that deceased Pandurang had not effected oral partition of suit properties in 2000 between deceased Madhukar and plaintiff no.1- Vijay ?”

4. Facts relevant for addressing the proposed substantial question of law needs to be stated.

The appellants are the original defendants. They are claiming to be legal heirs of deceased Madhukar. Deceased Madhukar is the brother of respondent Nos. 1 and 3 to 6 and son of the deceased respondent No.2. The respondents filed the suit for partition and separate possession of equal share with Madhukar in the ancestral property namely the agricultural fields described in Para No 2 of the plaint. The respondents claimed that deceased Pandurang was the owner of the property and a common ancestor. After his death, the respondents and Madhukar become entitle to get equal share in the suit property. According to the respondents, Madhukar and the appellants/original

defendants dispossessed the respondents from the property and forcibly obtained the possession of the entire property.

5. The appellants/original defendants opposed the suit. According to them, there was oral partition of the suit property during the lifetime of Pandurang and the equal share was given in the suit property to plaintiff No.1-Vijay and deceased Madhukar.

6. Parties adduced evidence before the trial Court. Learned Judge of the trial Court on appreciation of the evidence recorded the finding that there was no oral partition, as pleaded by the appellants/original defendants, during the lifetime of Pandurang. Learned Judge of the trial Court, in view of the amended provisions of Section 6 of the Hindu Succession Act, 1956 and the reported decision cited by the advocate for the plaintiffs held that Section 6 of the Hindu Succession Act is not having prospective operation but it relates to the incidence of birth of daughter. Learned Judge found that there was no basic pleading with necessary particulars of partition of suit property in two shares as

sought to be contended by the appellants/original defendants and the evidence to prove the case of the partition was woefully lacking.

7. Learned District Judge on re-appreciation of the evidence recorded his agreement with the findings of fact arrived at by the learned Judge of the trial Court on the issue of the partition of the suit property during the lifetime of Pandurang as sought to be contended by the defendants. Learned Judge in view of the decision in case of *Vineeta Sharma .v/s. Rakesh Sharma and others*¹ held that the daughters/women are entitled to coparcenary right from the moment they are born. As far as this settled legal position is concerned there is hardly any dispute at the behest of the appellants/defendants. The only dispute is that this legal position would not be applicable *inasmuch* as there was in fact partition during the lifetime of Pandurang and the suit property was divided by *metes and bounds* in two shares and one share was allotted to original plaintiff No.1 and one share to his brother deceased Madhukar through whom the appellants/defendants claimed right in the property. The

1 (2020) 9 SCC 1

proviso to Section 6 needs to be applied to the fact situation. The proviso will come into play and will be of some help to the appellants provided they are able to establish that infact there was a partition as contended by them during lifetime of Pandurang.

8. On going through the record it is seen that the pleading in the written statement as to the partition is woefully lacking. There is no contemporaneous documentary evidence to corroborate the half-hearted pleading of the appellants/defendants as to the partition. In the given factual situation the appellants/defendants were required to raise the specific pleading as to the oral partition with particulars such as date, year and more particularly the share of Pandurang in the property. If it is the case of the defendants that Pandurang did not retain any share in the property with plaintiff No.1 and deceased Madhukar it was necessary to aver and prove this fact. It is to be noted that this factual aspect would have a great bearing with the rights of the daughters in the share of the father before amendment to Section 6 of the Hindu Succession Act. It is seen that for the first time in the evidence some of the witnesses have stated

that the daughters of Pandurang had relinquished their right in the property. Similarly, there is no averment as to the relinquishment of right to get share with others by Pandurang. Learned Judge in the facts situation was required to address the question as to whether there was any evidence as to the partition of the property as sought to be contended by the appellants/defendants. Learned Judge of the trial Court based on the oral and documentary evidence rejected this half-hearted defence of the appellants/defendants. Learned Appellate Court on re-appreciation of the evidence confirmed this finding of fact recorded by the trial Court.

9. It is seen there there is no perversity in the findings of fact recorded by the Courts below. The findings are based on proper appreciation of evidence. On consideration of the entire material I conclude that the Courts below were justified in holding that the deceased Pandurang had not effected oral partition of property in the year 2000 between deceased Madhukar and plaintiff No.1-Vijay. The question is accordingly answered in the affirmative. The appeal does not involve any substantial question of law. It is accordingly

dismissed at the stage of admission.

10. The second appeal stands **disposed of**,
accordingly. No order as to costs.

(G. A. SANAP, J.)

Namrata