



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 234 OF 2000

1. Kantabai W/o Machindranath Hake
Age- Major, Occ-Household
R/o: Nandwali
Tal: Shirur Kasar, Dist: Beed

....APPELLANT
(ORIGINAL PLAINTIFF)

VERSUS

1. Suryabhan S/o Shripat Hake
(Abated as per order of Registrar dated 08.12.2010)
2. Antikabai W/o Suryabhan Hake
(As per Court order dated 19.01.2022, R-1 & 2
are died and Lrs. Are already on record i.e. R-3 &4)
3. Ashok S/o Suryabhan Hake
Age : 38 yrs Occ: Agriculture
R/o: Adgaon Tq: Aurangabad
Dist: Aurangabad
4. Dinkar S/o Suryabhan Hake
(Died, Thr. his Lrs.)
- 4.1. Kamalbai W/o Dinkar Hake
Age : Adgaon(BK), Tq: Aurangabad
Dist: Aurangabad-431007
- 4.2. Shivganga D/o Dinkar Hake
Age: 29, Occ: Household
- 4.3. Shobha D/o Dinkar Hake
Age: 25, Occ: Household,
Both Respondent No.4.2 and 4.3
R/o: Parkhee Niwas, Behind Himalaya Petrol Pump,
Kalana, Erandol,
District-Jalgaon, Pin: 425109

4.4. Shivraj S/o Dinkar Hake
Age: 27, Occ: Agriculture,
R/o: Adgaon (BK), Tq: Aurangabad
Dist: Aurangabad – 431007

(R. No. 4.1 to 4.4 amended as per
Court order dated 19.01.2022)

....RESPONDENTS

Mr. K. D. Khade, Advocate for the appellant

Mr. S. R. Deshpande, Advocate for the respondent Nos.4/1,
4/4 and 3

WITH
CIVIL APPLICATION NO. 12724 OF 2023 IN SA/234/2000
WITH
CIVIL APPLICATION NO. 14352 OF 2023 IN SA/234/2000

.....

CORAM : ROHIT W. JOSHI, J.

DATED : 11TH MARCH, 2025

ORAL JUDGMENT :-

. The original plaintiff has filed the present Second Appeal under Section 100 of the Code of Civil Procedure challenging the judgment and decree dated 04.08.1999 passed by the learned 3rd Additional District Judge, Aurangabad, which was again confirmed by the same learned Judge vide judgment and order dated 18.11.1999 while rejecting M.A.R.J.I. No.249 of 1999 i.e. application for review, filed by the plaintiff.

2. The plaintiff had filed a suit for partition and separate possession, the Regular Civil Suit No.922 of 1992 against her father-in-law, mother-in-law and two brothers-in-law, who were arrayed as defendant Nos.1 to 4 in the suit. The said suit which was registered as Regular Civil Suit No.922 of 1992 came to be decreed vide judgment and decree dated 16.11.1994. The learned Trial Court was pleased to grant $1/5^{\text{th}}$ share to the plaintiff on the ground that the family comprised of father, mother and three sons, each of whom will be entitled to $1/5^{\text{th}}$ share and since the plaintiff was widow of one of the sons, she would inherit the share of her husband in the suit properties.

3. Both the parties filed appeals challenging the said judgment and decree passed by the learned Trial Court, the appeal filed by the plaintiff came to be registered as Regular Civil Appeal No.101 of 1996 and the appeal filed by the defendants came to be registered as Regular Civil Appeal No.76 of 1995. The learned First Appellate Court upon hearing the parties has dismissed Regular Civil Appeal No.101 of 1996 filed by the plaintiff and Regular Civil Appeal No.76 of 1995 was partly allowed in as much as share of the plaintiff

was reduced from $1/5^{\text{th}}$ share to $1/12^{\text{th}}$. The plaintiff thereafter filed an application for review as aforesaid, which came to be rejected vide judgment and decree dated 18.11.1999.

4. Learned Counsel for the appellant, who is the original plaintiff contends that the learned First Appellate Court has erred in reducing the share, he contends that the family comprised of father, his three sons and mother. Since, the property was ancestral property, the father and three sons alongwith the mother were entitled to $1/5^{\text{th}}$ share, which was rightly considered by the learned Trial Court. He contends that being widow of deceased/coparcener, the plaintiff was entitled to receive the share that had fallen to the share of her husband.

5. Per contra, learned Advocate for the respondents contends that the family comprised of father, mother and four sons. One of the sons namely, Shivaji had expired in the year 1991 i.e. approximately a year prior to filing of the suit. The contention raised by the learned Counsel is that since Shivaji was also a coparcener in the family, on his death a notional

partition will have to be assumed as per Section 6 of the Hindu Succession Act, 1956 as it has stood prior to the amendment of the year 2005. The share of deceased Shivaji would not go by survivor-ship but will go by succession to his class one legal heir, who is the mother/defendant no.2. The learned Advocate contends that the husband of the plaintiff deceased Machindra had $1/6^{\text{th}}$ share in the suit property and not $1/5^{\text{th}}$ as has held by the learned Trial Court. He further contends that Machindra was survived by two Class-I legal heirs i.e. widow and mother and therefore, the plaintiff, who is widow of Machindra will be entitled to $1/12^{\text{th}}$ share, which is rightly granted by the learned First Appellate Court.

6. The plaintiff/wife has filed the present Second Appeal which came to be admitted on 27.06.2000 on the following substantial question of law:

“Whether the share of the plaintiff decided by the First Appellate Court to be $1/12^{\text{th}}$ is correct one?”

7. The factual position emerging from record is that Suryabhan/defendant No.1 and his wife/defendant No.2 were blessed with 4 sons and a daughter. Machindra/ the husband of plaintiff, who was one of the sons expired on 24.07.1978.

On the demise of Machindra, a notional partition will have to be assumed in the family on 24.07.1978, since he was survived by two class one legal heirs, who were females i.e. his widow and mother. As per Section 6 of the Hindu Succession Act, share of Machindra will have to be carved out by notional partition. As on 24.07.1978, there were five male members i.e. the coparceners and the mother i.e. defendant No.2. Although, the mother is not entitled to claim partition, nonetheless, on a partition in the family, she is also entitled to a share as if she is a coparcener.

8. In that view of the matter, on 24.07.1978, six shares will have to be carved out by notional partition and $\frac{1}{6}$ th share of the deceased Machindra will then go by intestate succession to his Class-I legal heirs as per Section 8 of the Hindu Succession Act. The two Class-I legal heirs of Machindra are undisputedly the defendant No.2/his mother and the plaintiff/his widow, both will be entitled to equal share i.e. $\frac{1}{2}$ of $\frac{1}{6}$ th share.

9. In that view of the matter, the plaintiff will be entitled to $\frac{1}{12}$ share in the suit properties, which is rightly computed

by the learned First Appellate Court. I do not find any error in the shares, carved out by the learned First Appellate Court in the impugned judgment and decree. The question of law is answered accordingly and the appeal is **dismissed** with no order as to costs.

10. The parties inform that after filing of the suit, certain suit properties have been alienated. The learned Court dealing with final decree proceeding or execution as the case may be shall take into consideration subsequent alienations while affecting partition by metes and bounds. It is informed that one of the suit properties is acquired under the provisions of land acquisition Act. The parties will be entitled to claim compensation in accordance with the adjudication as made above i.e. to say that the plaintiff will be entitled to 1/12th compensation alongwith accrued interest for the acquired land.

11. Rule stands discharged accordingly.

12. Pending Civil Applications are disposed of.

(ROHIT W. JOSHI, J)