



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.432 OF 2017

Piraji Bhagwan Bahirwal And Others
VERSUS
Rahibai Sampati Bhandane And Others

...
Advocate for Appellants : Mr. H.V. Tungar
Respondent nos. 1 To 3, 4/a To 4/f, 5/a To 5/f and R-6, 8, 9
Served.
Mr. R/7 Died

...
WITH
CIVIL APPLICATION NO. 8353 OF 2017 IN SA/432/2017

CORAM : S. G. CHAPALGAONKAR, J.

Dated : March 10, 2025

FINAL ORDER :-

1. The appellants/original defendants impugn the judgment and decree dated 5.10.2016 passed by the District Judge, Beed in RCA No.186 of 2014 thereby upholding the judgment and decree dated 17.11.2014 passed by the Civil Judge Jr. Division, Beed in RCS No.283 of 2009.
2. Respondent no.1/plaintiff filed RCS No.283 of 2009 seeking decree of partition and separate possession in respect of the suit properties bearing gat nos.158, 159, 180, 186 and 187 situated at Pimpalwai, Tq. & District Beed. According to the plaintiff, those are joint family properties of plaintiff and

defendant nos.1 to 8, 12, 14 to 16. All those properties were owned by one Bapurao, who died leaving behind two sons namely Natha and Bhagwan. Plaintiffs and defendants are legal heirs of Bhagwan. Natha died issue-less. Defendant no.1 mutated his name in the record of rights in respect of property left by Natha excluding plaintiff's right and transferred in favour of third party. When plaintiff asked for partition and separate possession of her share, he refused.

3. Defendants refuted plaintiffs claim by filing written statement contending that late Natha executed gift in favour of defendant no.1. As such, defendant no.1 acquired absolute ownership of $\frac{1}{2}$ share in the suit properties. Balance $\frac{1}{2}$ share has been partitioned between defendants. Plaintiff is not entitled to any share in the suit property. Trial Court, after evaluation of the evidence, accepted plaintiff's case and held that plaintiff is entitled for $\frac{1}{5}$ th share in the suit property.

4. Defendants filed R.C.A. No.186 of 2014 before District Judge, at Beed assailing the decree passed by the Trial Court. However, learned District Judge concurred with findings of the Trial Court and dismissed appeal vide judgment and decree

dated 5.10.2016. Hence, defendants have filed present second appeal.

5. Mr. Tungar, learned advocate appearing for the appellants would submit that suit property cannot be said to be ancestral property or coparcenary property of plaintiff and defendants. He submits that originally suit property was owned by Baburao which was inherited by Natha and Bhagwan. Natha died issue-less. Plaintiff and defendants being legal heirs of Bhagwan can claim that Bhagwan's property was ancestral property, but such claim cannot be raised in respect of property of Natha. He submits that plaintiffs could have asked for declaration of ownership. The suit simplicitor for partition and separate possession could not have been entertained. In support of his contentions, he relies upon the exposition of law laid down in case of **Mangammal @ Thulasi and another Vs. T.B. Raju and others**, reported in 2018 SCC online SC 422, wherein it is observed thus :-

“any property inherited upto four generations of male lineage from the father, father's father or father's father's father i.e. father, grand father etc., is termed as ancestral property. In other words, property inherited from mother, grandmother, uncle and even brother is not ancestral property. In ancestral property, the right of property accrues to the coparcener on birth. The concept of ancestral property is in existence since time immemorial.”

6. In light of the aforesaid exposition of law, he submits that plaintiff was not entitled for relief of partition and separate possession in respect of the property left behind by Natha, when plaintiffs and defendants are legal heirs of Bhagwan.

7. Admittedly, Natha died intestate. Section 8 of the Hindu Succession Act would therefore apply for succession of his property. Plaintiff and defendants being son and daughter of brother of Natha would fall in entry (iv) of Class-II heirs under section 8.

8. It has been proved on record that there was no previous partition of the property. Therefore, applying general rule of succession, plaintiff as well as the defendant no.1/Piraji are entitled for inheritance of the property. The property left by Natha may not be treated as ancestral property in strict sense, however, certainly, it is a joint family property inherited by plaintiff and defendant no.1 being class – II heirs of Natha. Both the Courts have rightly held that plaintiff has 11/72th share in the suit property. No infirmity is pointed out as to carving out the shares. Therefore, contentions of Mr. Tungar

that suit property not being ancestral property, the suit for partition could not have been maintained is not acceptable. In case of joint family property, relief of partition and separate possession can certainly be asked for.

9. No fault can be found in the concurrent findings recorded by the Courts below. No substantial questions of law arises for consideration in this second appeal. Hence, Second Appeal stands **dismissed**. Pending civil application also stands **disposed of**.

(S. G. CHAPALGAONKAR)
Judge

...

aaa/-