

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 SECOND APPEAL NO. 229 OF 2015

JANARDHAN SOPANRAO WADJE AND ANOTHER
VERSUS
KALYANRAO SOPANRAO WADJE AND OTHERS

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Advocate for Appellant : Mr. Kurundkar Sunil V.
Advocate for Respondent nos. 1 to 3 : Mr. Mr. Bilolikar Upendra B.

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CORAM : SHAILESH P BRAHME, J.
DATE : 10.09.2025

PER COURT :

Heard both sides.

2. A very limited issue calls for consideration in the second appeal as to the allotment of shares in the joint family property. Both the learned counsels are *ad idem* that allotment of share of 1/5th to the plaintiffs by the Trial Court, which is confirmed by the lower Appellate Court is not in consonance with law.

3. The appellants are original defendant no. 2 and the plaintiffs respectively. Respondent no. 2 Kausalyabai who is defendant no. 3 expired during pendency of appeal and her share would devolve upon her children. Respondent no. 3 Pratima is original defendant no. 4. The relationship between the parties is not disputed.

4. Sopanrao and Kausalyabai had four children namely; Sadashiv (plaintiff), Kalyan (defendant No. 1), Janardhan (defendant no. 2) and Pratima (defendant no. 4). Regular Civil Suit No. 45/2004 was filed for partition, possession and declaration that the sale-deed dated 19.06.2004 executed by defendant no. 1 in favour of defendant no. 5 Nivrutti is bad in law. It was decreed vide judgment dated 14.07.2008 granting 1/5 share to

the plaintiff and declaring that the sale-deed is bad in law.

4. Being aggrieved, defendant no. 5 Nivrutti had preferred Regular Civil Appeal No. 20/2008. Present appellants preferred cross-objection. The heirs of defendant no. 5 Nivrutti-purchaser withdrew his appeal by tendering pursis at Exh. 44. The cross objection (Exh. 19) was dismissed vide judgment dated 05.12.2014.

5. The purchaser of the property-defendant no. 5 Nivrutti had withdrawn Regular Civil Appeal No. 20/2008, therefore, he is not made party in the present second appeal. Kausalyabai, mother of the surviving parties is no more. Under such circumstances, plaintiff and defendant nos. 1, 2 and 4 are entitled to equal share being co-parcener and by implication of Section 6 of the Hindu Succession Act. The judgment and decree passed by the Courts below need modification.

6. (i) The Second Appeal is partly allowed.

(ii) The judgment and decree dated 14.07.2008, passed in Regular Civil Suit No. 45/2004 as well as judgment and decree dated 05.12.2014 passed by the District Judge, Kandhar, to the extent of dismissing cross objection at Exh. 19 in Regular Civil Appeal No. 20/2008, are quashed and set aside.

(iii) Suit filed by the respondents is partly decreed holding that plaintiff and defendant nos. 1, 2 and 4 are entitled to 1/4th share each.

(vi) The decree shall be referred to the revenue authority under Section 54 of the Code of Civil Procedure for partition by metes and bounds.

(v) The decree of Lower Appellate Court to the extent of withdrawal of appeal by the purchaser-heirs of defendant no. 5 vide

pursis (Exh. 44) is maintained.

(vi) Decree be drawn accordingly.

(SHAILESH P. BRAHME, J.)

mkd/-