



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 SECOND APPEAL NO. 278 OF 2023

AISHWARYA MANOHAR WAGHE AND ANOTHER
VERSUS
SHRIDHAR JAIRAM WAGHE DECEASED THROUGH LRS AND OTHERS

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Advocate for Appellants : Mr. Tapan K. Sant
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CORAM : S. G. CHAPALGAONKAR, J.
Dated : 28.03.2025

PER COURT :-

1. Appellants/Original Plaintiffs filed appeal impugning judgment and decree dated 13.11.2019 passed by District Judge-1, Dhule in Regular Civil Appeal No. 149 of 2012 modifying judgment and decree dated 07.08.2007 passed by Civil Judge Senior Division, Dhule in Special Suit No. 110 of 2003.
2. Appellants/Plaintiffs instituted suit seeking decree for partition and separate possession of immovable property against their father, grand-father and grand-mother. According to plaintiffs their mother Kalpana married with defendant No. 2 Manohar. Defendant Nos. 1 and 3 are their grand parents. Subject matter of suit is plot bearing Nos. 14 and 15, which are part of Survey No. 29/1 + 31/1 and agricultural land situated at Gut No. 331/5 and 323. According to plaintiffs agricultural land mentioned in plaint paragraph No. 1-C is ancestral Hindu Joint Family property and property described in plaint paragraph No. 1-A and 1-B are purchased by defendant No. 1 in name of defendant No. 3 out of joint family income. Defendants made construction over plots mentioned in paragraph Nos. 1-A and 1-B out of joint family income generated from land mentioned in paragraph No.1-C.
3. Defendant Nos. 1 and 3 contested claim contending that agricultural land has been partitioned between defendant No. 1 and his brothers in the year 1997. He gave his land for cultivation to his brother. There was no income from said land. Suit property described in paragraph Nos.1-A and 1-B has been purchased out of personal income of services as such those are self acquired properties.

4. Trial Court upon evaluation of evidence dismissed suit holding that suit properties are self acquired properties of defendants, therefore, plaintiffs cannot have any share in those properties. However, in appeal, learned District Judge recorded findings that plaintiff, defendant Nos. 1, 2 and 4 are having 1/4th share in suit properties described in plaint paragraph No. 1-C i.e. agricultural land and further held that plaintiff No. 2 and defendant No. 3 are having 1/3rd share each in 1/4th share of deceased defendant No. 2 in properties mentioned in paragraph Nos. 1-C.

5. In this background, Mr. Tapan Sant learned Advocate appearing for appellants informs this Court that defendant No. 2 died during pendency of First Appeal, whereas defendant No. 1 died during pendency of this Second Appeal. Their shares would be inherited by plaintiffs as per natural succession, therefore, nothing survives in this appeal, however, executing Court needs to modify shares considering death of defendant No. 1 during pendency of this appeal.

6. It is trite that in case of death of any co-parcener after passing decree for partition and separate possession, executing Court can re-determine shares and modify decree accordingly.

7. In that view of the matter, in case of execution of decree under appeal, shares shall be modified keeping in mind death of defendant No. 1.

8. In view of aforesaid observations, Second Appeal stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE