



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 SECOND APPEAL NO. 197 OF 2016

1. Digambar S/o Namdeo Munjal,
Age : 77 years, Occ : Agriculture,
R/o Tattapur, Tq. Renapur,
Dist. Latur.
2. Sow. Lochanbai W/o Digambar Munjal (Died)
(As per Court's order dated 09.12.2019 LR's of Deceased is on
record as Appellant Nos. 1 and 3)
3. Laleeta D/o Digambar Munjal,
Age : 40 years, Occ : Agriculture & Service,
R/o Renapur, Dist. Latur.

The appellants through their
General Power of Attorney
Shrihari S/o Vasantrao Salunke,
Age : 38 years, Occ : Agriculture,
R/o Niwada, Tq. Renapur,
Dist. Latur.

... APPELLANTS
(Orig. Defendants)

VERSUS

1. Kashibai W/o Digambar Munjal (Died)
(As per Court's order dated 09.12.2019 LR's of Deceased is on
record as Respondent No. 2 and 3)
2. Sudhir S/o Digambar Munjal,
Age : 52 years, Occ : Business,
R/o Utkar, Tq. Ausa, Dist. Latur.
3. Shantabai W/o Madhukar Thorat,
Age : 48 years, Occ : Household,
R/o Utkar, Tq. Ausa, Dist. Latur.

... RESPONDENTS
(Orig. Plaintiffs)

Mr. S. S. Choudhary and Mr. D. D. Sarvade Patil, Advocate for Appellants
Mr. R. P. Adgaonkar, Advocate for Respondent Nos. 2 and 3

CORUM : ROHIT W. JOSHI, J.

DATE : 1st APRIL, 2025

JUDGMENT :

1. The original defendants have filed present Second Appeal, being aggrieved by the judgment dated 04.05.2012 passed by the learned Civil Judge, Junior Division, Ausa in Regular Civil Suit No. 292 of 2000, which was confirmed in Regular Civil Appeal No. 283 of 2012 vide judgment and decree dated 11.01.2016 passed by the learned District Judge-2, Latur. The original plaintiff Nos. 1, 2 and 3 are first wife, son and daughter respectively of defendant No. 1. Defendant No. 2 is the second wife of defendant No. 1 and defendant No. 3 is the daughter of defendant No. 1 and defendant No. 2. The second marriage is admittedly solemnised during the lifetime of the first wife and also while the marriage with the first wife was subsisting. It is also not in dispute that the second marriage is solemnised after the commencement of Hindu Marriage Act, 1955. The plaintiffs had filed a suit for partition and separate possession with respect to the suit properties. Undisputedly, the suit properties are ancestral properties of defendant No. 1 and his descendants. The learned Trial Court was pleased to pass a decree for partition and separate possession granting 1/4th share in the suit

properties to the plaintiff Nos. 1 to 3 and defendant No. 1. Aggrieved by the said decree for partition, the defendant filed appeal being Regular Civil Appeal No. 283 of 2012. The only contention in appeal was that defendant Nos. 2 and 3 should also get share. Reliance was placed on Section 16 of the Hindu Marriage Act, to claim a separate share for defendant No. 3. It was contended that although defendant No. 3 is a daughter begotten from second marriage, which is otherwise void, in view of Section 16 she will be entitled to receive properties of her father i.e. defendant No. 1. The said contention came to be rejected by the learned trial Court as well as the learned First Appellate Court on the ground that by virtue of Section 16 of the Hindu Marriage Act, child begotten from void marriage can claim right of inheritance in the individual properties of the father and not in the ancestral property of father. In that view of the matter, the learned counsel for the appellants/original defendants contends that the learned Courts have erred in interpreting Section 16 of the Hindu Marriage Act, 1955. It is contended that even if it is held that the defendant No. 3 is not entitled to independently claim a share in the coparcenary property, she should get a share from the share of defendant No. 1, who is her father.

2. The present Second Appeal was dismissed initially vide judgment dated 13.02.2020 passed by this Court. However, thereafter

the matter was carried to the Hon'ble Supreme Court by the present appellants vide SLP(Civil) 6581 of 2020. The Hon'ble Supreme Court has remanded the matter for fresh consideration vide order dated 05.01.2024. The matter is being taken up for hearing in the light of the said order passed by the Hon'ble Supreme Court.

3. The learned counsel for the respondents/original plaintiffs has placed reliance on judgment of the Hon'ble Supreme Court in the matter of Revanasiddappa vs Mallikarjun reported in (2023) 10 SCC 1. The Hon'ble Supreme Court has held that a child begotten from second wife is not entitled to claim any share independently in the coparcenary property of his or her father. However, it is held that after the death of the father, a child begotten from illegitimate marriage will be entitled to receive his or her share from the share of the father in the coparcenary property by inheritance, in view of Section 16 of the Hindu Marriage Act, 1955. In the present case, defendant No. 1, father of the parties is still alive and therefore, his succession is yet to open. The Hon'ble Supreme Court has settled the controversy holding that a child begotten from illegitimate marriage cannot claim independent share in coparcenary or ancestral property. In that view of the matter, I am of the opinion that the learned Courts have rightly granted 1/4th share each to the three plaintiffs and defendant No. 1. The decree passed by the learned Trial

Court, which is confirmed by the learned First Appellate Court does not call for any interference in the present Second Appeal.

4. The Second Appeal is **dismissed** as such.
5. Pending civil applications, if any, stand disposed of.

[ROHIT W. JOSHI]
JUDGE

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