



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 SECOND APPEAL NO. 930 OF 2022

NAMITA DNYANDEO PONDE AND ANR.

VERSUS

RAVAN KHANDU PONDE AND ORS.

WITH

CIVIL APPLICATION NO. 17373 OF 2022

IN SA/930/2022

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Mr. Gangakhedkar Shailendra S, Advocate for Appellant

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CORUM : ROHIT W. JOSHI, J.

DATE : 1st APRIL, 2025

ORDER :

1. The appellants in the appeal are original plaintiffs. They had filed a suit for partition and separate possession being Regular Civil Suit no. 300 of 2002, which was dismissed by the Learned Trial Court in its entirety vide judgment and decree dated 18.11.2016. Aggrieved by dismissal of the suit, the original plaintiffs preferred First Appeal being Regular Civil Appeal no. 140 of 2016. The said appeal is partly allowed by the Principal District and Sessions Judge, Osmanabad vide judgment and decree dated 23.12.2021. The learned First Appellate Court has passed decree for partition and separate possession in favour of the plaintiffs with respect to 1.77 HR land in Gat No. 161 and the decree of the learned Trial Court dismissing the suit with respect to the other property is maintained.

Aggrieved by the said judgment and decree dated 23.12.2021, original plaintiffs have filed the present Second Appeal.

2. The facts of the case in brief are that one Khandu was survived with two sons and two daughters namely, Dnyandev, Ravan, Sheshabai and Kashi bai. Dnyandev is the husband of plaintiff no. 1 and father of plaintiff no.2. Ravan is defendant no.1. Two daughters Sheshabai and Kashibai are defendant Nos. 3 and 4 respectively. The widow of Khandu is defendant no. 2. She has died while the suit was pending leaving behind the plaintiffs and defendant Nos. 1, 3 and 4 as legal representatives. Khandu has expired on 27.01.1987. Dnyandev the predecessor of plaintiff has expired in the year 1988. After the demise of Dnyandev, his widow plaintiff no. 1 and daughter plaintiff no. 2 filed a suit for partition in separate possession with respect to agricultural lands bearing Gat Nos. 161 comprising of two parts admeasuring 2.80 HR and 1.77 HR and Gat No. 161 admeasuring 1.82 HR. Apart from the two agricultural lands, house property bearing Nos. 302 and 358 are also the suit properties in which a share is claimed by the plaintiffs.

3. It is the case of plaintiffs that land bearing Gat No. 162 and Gat No. 161 to the extent of 2.80 HR as also the two house properties were purchased by defendant no. 1 in his capacity as *Karta* of the Joint Hindu

Family comprising of descendants of deceased Khandu. It is therefore, claimed that although these properties are purchased in the name of defendant no. 1, they are in essence properties of the Joint Hindu Family and therefore, the plaintiffs are entitled to share in the same being descendants of deceased coparcener Dnyandev.

4. As against this, the case of defendant no. 1 is that the deceased Khandu, the father did not have any immovable property of his own. He claims that the father was having goats, which were distributed between the two sons Dnyandev (predecessor of plaintiffs) and Ravan/defendant no. 1, during his lifetime in the year 1973-74. The defendant no. 1 claims that land bearing Gat No. 161 to the extent of 2.80 HR as also land bearing Gat No. 162 and the house property were purchased by him from his own income and therefore, the same cannot be treated as Joint Hindu Family properties as in contended by the plaintiffs.

5. As stated above, the learned Trial Court has dismissed the suit in its entirety vide judgment and decree dated 18.11.2016. However, the learned First Appellate Court granted a decree for partition with respect to property bearing Gat No. 161 admeasuring 1.77 HR. Learned First Appellate Court has granted 1/4th share each to the plaintiffs, defendant no. 3 and defendant no. 4 in the said property. The learned First Appellate

Court has held that land bearing Gat No. 161 to the extent of 1.77 HR was purchased by deceased Khandu and after his demise, the class-I legal heirs were entitled to 1/4th share each in the said property. Since plaintiffs are claiming through deceased son, Dnyandev, they are jointly allotted by 1/4th share.

6. As regards the other properties, the learned First Appellate Court has maintained the decree passed by the learned Trial Court dismissing the suit. Perusal of the judgment by the learned First Appellate Court will demonstrate that the plaintiff no. 1, who has entered witness-box, has admitted during her cross examination that her father-in-law Khandu did not own or possess any immovable property. She admitted that the father-in-law was having some goats, which was his source of income.

7. The learned First Appellate Court has then referred to admission by plaintiff no. 1 that the goats were distributed in the years 1973-74. The learned First Appellate Court refers to sale deeds of the properties purchased by defendant no. 1 after the year 1973-74. The property bearing Gat No. 161 admeasuring 2.80 HR is purchased by defendant no. 1 vide sale deed dated 12.12.1977 as Exhibit 111. In view of the above, it is held that this property is separate property of the defendant no. 1.

8. As regards the other property bearing Gat No. 161, the said property is sold by both the brothers i.e. defendant no. 1 and Dnyandev (husband of plaintiff no. 1) to the defendant no. 4 and as such the said property is not available for the partition. The contention of the plaintiffs that the said sale deed was a part of family settlement is not accepted by learned Court. Even if it is accepted by the sale deed with respect to the Gat No. 162 was executed in favour of defendant no. 4 by way of family settlement, even then the sale transaction cannot be set aside and the property cannot be included in the partition since the family settlement and the sale deed are not challenged. In that view of the matter, no fault can be found with respect to the judgment and decree by the learned First Appellate Court dismissing the suit with respect to Gat No. 162.

9. As regards the house property, it is apparent from reading of paragraph 12 of the plaint that the said properties were admittedly purchased in the name of the defendant no. 1. Perusal of pleadings and evidence does not disclose as to whether the said house properties were purchased prior to the year 1973-74 or thereafter. Thus, in the absence of any clear pleadings and evidence in this regard dismissal of the suit with respect to house properties also cannot be faulted since the house properties are purchased in the name of defendant no. 1.

10. In that view of the matter, in my considered opinion no substantial question of law arises for consideration in the present Second Appeal. The Second Appeal is therefore, **dismissed**.

11. Pending civil applications, if any, stand disposed of.

[ROHIT W. JOSHI]
JUDGE

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