



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

949 SECOND APPEAL NO. 191 OF 2024

**SUSHILABAI GOPINATH NARODE & OTHERS
VERSUS
NABABAI GOPINATH NARODE (DIED) BALASAHEB
GOPINATH NARODE & OTHERS**

...
Advocate for Appellants : Mr.V.P.Latange

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 11.11.2025

P.C. :

1] The present Second Appeal is filed, challenging the order of the Appellate Court, dismissing the Appeal filed by the appellants, on the following substantial questions of law :

C) Both the courts below should have recorded their findings on the basis of evidence which they have held as proved but the courts below once disbelieve the registered sale deed as well as Will deed produced by the appellants, in its entirety then how can findings of fact regarding nuptial tie between plaintiffs and common ancestor should have been recorded on the basis of such evidence?

D) In the suit for partition when validity of marriage is the crucial issue which determined the vest and divest the title from contesting heirs, then tangible evidence of validity of marriage required, mere stray admissions or failure of defence would not sufficient to record findings about validity of marriage, this settled principle of law quite oblivious of by the courts below thereby committed gross error.

E) The learned courts below should have always examined even in the Ex-parte proceeding what is the base of cause of action for filing the suit and then proceed to analysis the evidence in the light of legal provisions whether plaintiffs proves the cause of action and entitled for the decree prayed, in the present case entire cause of action set up in the plaint is plaintiff number one' is first legally wedded wife of common ancestor and this fact ought to have been proved by cogent and tangible evidence by the plaintiffs even in absence of defence. But the courts below failed to analysis evidence as per law?

The case in brief has put up by the appellants is as under :

2] Suit for partition, separate possession and injunction was instituted by Nababai Narode and Balasaheb Gopinath Narode against the appellants [defendant nos. 1 to 3]. The case of the plaintiff is that Lahanu Gopala Narode had purchased the suit property and he died on 13.01.1970. After his demise his wife Dagadabai, son Gopinath and daughter Anusayabai became owner of the suit property. Deceased plaintiff Nababai is first wife of Gopinath Narode. Plaintiff no.2 Balasaheb is son of Gopinath Narode. Defendant no.1 Sushilabai is second wife of Gopinath Narode. Defendant nos. 2 and 3 are sons and defendant no.4 is daughter of defendant no.1. Defendant nos. 5 to 9

are heirs of Anusayabai. It is the case of the plaintiffs that the suit property after demise of Lahanu Narode got mutated in the names of his heirs i.e. wife Dagadabai, son Gopinath and daughter Anusaya in the revenue record. The suit property is ancestral joint family property of the plaintiffs and defendants. However, after death of Dagadabai the defendant no.1 in collusion with defendant nos. 2 to 5 got mutated the suit property. It is further case of the plaintiffs that by taking benefit of the mutation entry in 7/12 extract, the defendant nos. 1 to 6 were trying to dispossess the plaintiffs from the suit property and the suit is filed for partition, separate possession and injunction.

3] The defendant nos. 1 to 4 filed their written statement and contended that the defendant no.1 is legally wedded wife of deceased Gopinath Narode and defendant nos. 2 to 4 are his legitimate children. The suit property is self acquired property of deceased Gopinath. Nababai is not the legally wedded wife of the deceased Gopinath. As such, the defendants have submitted that Sushilabai [defendant

no.1] is the legally wedded wife of deceased Gopinath whereas Nababai i.e. plaintiff is not legally wedded wife of the deceased Gopinath. Considering the rival submissions, the trial Court framed followings issues :

Sr.No.	Issues	Findings
1.	Whether plaintiffs prove that the plaintiff no.1 is the legally wedded wife of deceased Gopinath?	Yes
2.	Whether defendant nos. 1 to 4 prove that, the defendant no.1 is the legally wedded wife of deceased Gopinath?	No
3.	Whether defendants no.1 to 4 prove that, the suit property was self acquired property of deceased Gopinath?	No.
4.	Whether defendants no.1 to 4 prove that, the defendant no.1 is the sole owner of land ad-measuring 1 Hector 33 R. out of the suit property standing in her name by virtue of sale deed dt.23/12/1983?	No.
5.	Whether the defendant nos. 1 to 4 prove that the deceased Gopinath has bequeathed the land adm 1H 67 Aar out of the suit property to them.	No.
6.	Whether the plaintiffs have undivided share in the suit property ? If, what share?	Yes 12/30 th
7.	Whether plaintiffs are entitled to partition and separate possession of their share, if any ?	Yes
8.	Whether plaintiffs are entitled to the relief of perpetual injunction as prayed for ?	Yes
9.	What order and decree ?	As per order.

4] All issues are answered accordingly. The trial Court, on considering the evidence on record has held that plaintiff no.1 is the legally wedded wife of the deceased Gopinath whereas defendants failed to prove that the defendant no.1 is the legally wedded wife of the deceased Gopinath. Accordingly, the trial Court, by judgment and order dated 07.07.2017 decreed the suit.

5] The appellants challenged the Judgment and order of the trial Court before the Appellate Court by filing Regular Civil Appeal No.37/2017. The Appellate Court has framed the following points and answered accordingly :

Sr.No.	Points	Findings
1.	Whether it is proved by the plaintiffs that Nababai was first wife of deceased Gopinath?	Yes
2.	Whether it is proved that the suit property is ancestral property of the plaintiffs and defendants ?	Yes
3.	Whether defendant nos. 1 to 4 proved that the suit property is self acquired property of deceased Gopinath and he had bequeathed 1.67 Aar land in favour of them ?	No.
4.	Whether it is proved by the defendant nos. 1 to 4 that defendant no.1 purchased 1H. 33 Aar land under sale-deed from Dagadabai ?	No.

5.	Whether the impugned judgment and decree warrants any interference ?	No.
6.	What order ?	As per final order.

6] The Appellate Court dismissed the Appeal, as such, the present Second Appeal is filed on the above questions of law.

7] The primary contention of the appellants is that the findings recorded by the courts below that the plaintiff no.1 is legally wedded wife of the deceased Gopinath is perverse and that burden of proof to establish that the plaintiff no.1 is legally wedded wife of the deceased Gopinath is on the plaintiff and she had failed to discharge the same. It is further contention of the appellants that the courts below have erroneously relied upon the documents i.e. will deed and sale deed. It is submitted that the Appellate Court has held that the will deed relied upon by the defendants is not proved and the sale deed relied upon the defendants was also nominal. Yet the appellate Court relied upon the will deed and sale deed dated 23.12.1983 and held that the plaintiff no.1 is the first wife of the

deceased Gopinath. The learned counsel submits that the Courts below has rendered the finding that the plaintiff is the legally wedded wife of the deceased Gopinath based upon documents which are not accepted by the courts below.

8] Having perused the order passed by the Appellate Court, more particularly at para no.15, it is stated that DW2 Uttam Kakolkar in cross examination has deposed that Nababai is first legally wedded wife of Gopinath and defendant Sushilabai is second wife of deceased Gopinath. It is also observed that the sale deed dated 23.12.1983 relied upon by the defendants is a nominal one. It is also mentioned in the sale deed that defendant no.1 Sushilabai is second wife of deceased Gopinath. There is no contra evidence available to show that the defendant no.1 is legally wedded wife of the deceased Gopinath. Considering this aspect of the matter, I see no error in the findings recorded by both courts below that the plaintiff is the legally wedded wife of deceased Gopinath and the findings recorded by both the Courts below are just and proper. Substantial

questions of law raised by the appellants do not arise for consideration. Hence, the present Second Appeal is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC