



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

**968 SECOND APPEAL NO. 345 OF 2024 WITH
CIVIL APPLICATION NO. 12135 OF 2024
IN SA/345/2024**

Jijabai Subhash Hivrare And Anr
VERSUS
Anshabai Madhav Narwade And Ors

Mr. S. S. Gangakhedkar, Advocate for appellant/s
Mr. A. A. Mukhedkar, Advocate for respondent No. 1

CORAM : R. M. JOSHI, J.
DATE : 03rd January, 2025

PER COURT :-

1. This appeal takes exception to the concurrent findings recorded by the trial Court and First Appellate Court in RCS No. 23/2014 dated 09.06.2023 and RCA No. 15/2018 dated 18.02.2020.
2. In order to appreciate the submissions made on behalf of both sides, it is relevant to take into consideration the facts which has led to the filing of this appeal.
3. Parties are referred to as plaintiffs and defendants.
4. Heard learned counsel for both sides.
5. Plaintiffs filed RCS No. 23/2014 for seeking partition and separate possession of the suit properties claiming the suit properties to

be ancestral properties and that there is no partition effected thereof. They also sought relief of injunction against the defendant. Defendants appeared and file written statement resisting the suit.

6. Learned trial Court decreed the suit. In the appeal said order came to be partially interfered with decree passed in favour of petitioner No.1 was set aside. Admittedly, plaintiff No. 1 has not been granted any relief, however, she has not challenge the said judgment and decree. Present appeal is filed by defendant No. 1.

7. It is the contention of the counsel for the appellant/original defendant No.1 that the trial Court as well as first appellate Court have committed serious error in appreciating the evidence on record. It is his submission that the claim of plaintiff No.1 who had stepped into witness box on behalf of plaintiffs is rejected by the trial Court and she has not been granted any share in the property. Thus according to him, on the basis of evidence of this witness, it cannot be held that plaintiff No.2 is daughter of Nagoji and Laxmibai. Thus, the sum and substance of his contention is that since the judgment and decree passed by the trial Court and confirmed by the appellate Court is not in consonance with the evidence on record and hence perverse.

8. Learned counsel for the original plaintiff No.1 supports

impugned judgment. It is his contention that on behalf of both plaintiffs, evidence of plaintiff No.1 was recorded and during the cross examination, no dispute was made by the defendant No.1 with regard to the fact that plaintiff No.1 is the daughter of Nagoji and Laxmibai. No issue was raised even before the first appellate Court in this regard nor effective cross examination is conducted by defendant No.1. He, therefore, seeks dismissal of appeal for want of involvement of substantial question of law.

9. Perusal of the record indicates that two plaintiffs filed suit for seeking partition of the suit properties. On behalf of these plaintiffs, plaintiff No.2 was examined. She has deposed on oath about plaintiff No.1 being daughter of Nagoji and Laxmibai. There is corroboration to this evidence with evidence of PW2 Nirmalabai. As rightly pointed out by the learned counsel for the respondent/original plaintiff No.1 that no dispute is made by the defendant No.1 with regard to the fact that plaintiff No.1 is daughter of Nagoji and in such circumstances, it was necessary for plaintiff No.1 to step into the witness box. It is necessary to take note of the fact that plaintiff No. 1 is not alien to the family of plaintiffs and defendants, though her legal status as wife of Subhash is under challenge. Only for reason that she was unable to prove that she is legally wedded wife of Subhash, her claim for partition and separate

possession of the share came to be rejected. However that does not mean that she had no knowledge about the relevant facts related to the parties to the suit. There is no cross examination effected of this witness in this regard. Only for the reason that the plaintiff has failed to prove her marital status, her testimony with regard to plaintiff No. 2 being daughter of ancestor of the plaintiffs and defendant, her evidence cannot be discarded. In absence of any cross examination of this witness by defendant, there was no reason for plaintiff No. 2 to stepped into witness box, no grievance can be made in this behalf by defendant No.1 in that regard.

10. Learned counsel for the appellant has also drawn attention of the Court to the specific objection raised before the first appellate Court about the bar of limitation on the ground that Nagoji died before 40 to 45 years before filing of the suit and Laxmibai has not come forward to stake any claim into the suit property. As far as the suit filed by plaintiff No.1 is concerned, the cause of action arose for her to file the suit after she demanded the partition and it was refused. This court, therefore, finds no substance in the said objection on limitation.

11. The findings recorded by both Courts below are in consonance with the evidence on record and as such cannot be called as perverse on facts or law. Thus, this appeal involves no substantial

question of law.

12. Hence, appeal stands dismissed. Pending civil application(s), if any, stands disposed of.

(R. M. JOSHI, J.)

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