



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

906 SECOND APPEAL NO. 12 OF 2022

1. Raosaheb S/o. Mahada Bangar
Age : 83 Years, Occu. Agril.,
R/o Bhayala, Tq. Patoda,
District Beed
2. Sau Radhabai W/o Raosaheb Bangar,
Age : 60 Years, Occu. : Agril.,
R/o. Bhayala, Tq. Patoda
District Beed.
3. Bhausahab S/o Raosaheb Bangar,
Age : 34 Years, Occu. : Agril.,
R/o. Bhayala, Tq. Patoda,
District Beed.
4. Ramesh S/o Raosaheb Bangar,
Age : 28 Years, Occu. : Agril.,
R/o Bhayala, Tq. Patoda,
District Beed.
5. Ganesh S/o Raosaheb Bangar,
Age : 24 Years, Occu. : Agril.,
R/o Bhayala, Tq. Patoda,
District Beed.

...Appellants
(Original Deft. Nos.1, 3 to 6)

VERSUS

1. Meenabai W/o Gokul Vighane,
Age : 31 Years, Occu. : Household,
R/o. Waghira, Tq. Patoda,
District Beed
2. Sau. Sumitra W/o Raosaheb Bangar,
Age : 73 Years, Occu. : Agril.,
R/o. Bhayala, Tq. Patoda,
District Beed.
3. Laxmibai W/o Asaram Mundhe,

Age : 45 Years, Occu. : Agril.,
R/o Tadsonna, Tq. Patoda,
District Beed.

4. Vimal W/o Sanusen Aghav,
Age : 43 Years, Occu : Agril.,
R/o Savargaon (Sonel),
Tq. Patoda, Dist. Beed.

5. Meerabai W/o Babasaheb Nagargoje,
Age : 41 Years, Occu. : Agril.,
R/o Yawalwadi, Tq. Patoda,
District Beed.

6. Ushabai W/o Ram Darade,
Age : 39 Years, Occu. : Agril.,
R/o. Limbarui, Tq. And Dist. Beed.

...Respondents
(Resp. No.1 Orig. Plaintiff)

Resp. No.2 Orig. Deft No.2,

Resp. No. 3 to 6, Orig. Deft. No.7 to 10)

...

Advocate for Appellant : Mr. S. S. Thombre

Advocate for Respondent No.1 : Mr. Y. K. Bobade & Mr. S. K. Deshmukh

...

WITH
CIVIL APPLICATION NO. 3525 OF 2022 IN SA/12/2022

MEENABAI GOKUL VIGHANE
VERSUS
RAOSAHEB MAHADA BANGAR AND ORS.

...

WITH
CIVIL APPLICATION NO. 424 OF 2022 IN SA/12/2022

RAOSAHEB MAHADA BANGAR AND ORS.
VERSUS
MEENABAI GOKUL VIGHANE AND ORS.

...
CORAM : ROHIT W. JOSHI, J.
DATE : 13th MARCH, 2025

ORAL JUDGMENT .:

1. The original defendant Nos.1, 3 to 6 in Regular Civil Suit No.134 of 2007 have filed the present Second Appeal challenging concurrent judgments and decrees passed in the said Civil Suit and Regular Civil Appeal No.64 of 2018.

The facts of the case in brief are as under :-

2. Defendant No.1, Raosaheb Bangar has two wives namely, Sumitra and Radhabai, who are defendant Nos.2 and 3 respectively in the said Civil Suit, whereas both Sumitra and Radhabai claim to be the first wife of defendant No.1/Raosaheb Bangar, a clear finding of fact is recorded by both the Courts that defendant No.2/Sumitra being the first wife is the legally wedded wife, and since the marriage is subsisting, defendant No.3 cannot be considered as legally wedded wife being the second wife. These are clear findings of fact which do not warrant any interference. Needless to mention that there is a difference of 20 years in the ages of defendant No.2 and defendant No.3 which further goes to suggest that defendant No.2 is the first wife as has been held by the learned Courts.

3. The plaintiff is daughter of defendant Nos.1 and 2. She had filed a suit for partition and separate possession being Regular Civil Suit No.134 of 2007. Apart from the father/defendant No.1 and his two wives i.e. defendant Nos.2 and 3, she had arrayed children from the first wife and second wife as defendant Nos.7 to 10 and 4 to 6 respectively, in the said Civil Suit. The suit properties are agricultural lands which according to the plaintiff are ancestral properties. The plaintiff claimed that the plaintiff, defendant No.1, defendant No.2 and defendant Nos.7 to 10 alone had share in the suit properties, defendant No.1 being the father, defendant No.2 being legally wedded wife of father and plaintiff and defendant Nos.7 to 10 being children begotten from the first wife.

4. Defendant Nos.1 and 3 to 6 opposed the suit contending that one of the suit properties bearing survey No.512, i.e. Gut No.306 was self acquired property of defendant No.1 and with respect to other properties, although, it was admitted that the said properties were joint family properties, it was claimed that defendant No.3 being the legally wedded wife and defendant Nos.4 to 6 being children begotten from legally wedded wife will have a share. Apart from this, a contention was also raised in the alternative that even if defendant No.3 was held to be second wife, in view of Section 16 of the Hindu Marriage Act,

1955 the defendant Nos.4 to 6 will have to be treated as legitimate children of defendant No.1 and therefore they will have right and share in all the suit properties assuming that the suit properties were ancestral properties.

5. The learned Trial Court has granted a decree for partition and separate possession in favour of the plaintiff holding that defendant Nos.3 to 6 cannot claim any share in the suit properties and $1/7^{\text{th}}$ share each is granted to the plaintiff, defendant No.1, defendant No.2 and defendant Nos.7 to 10. The foundation for carving out such shares is a finding that the suit properties are ancestral properties and the second wife and children begotten from the second wife will not have a share in ancestral properties. As regards suit property bearing Survey No.512 i.e. Gut No.306, the learned Trial Court has referred to admission of defendant No.1 in his cross-examination that the said property was acquired from joint family nucleus.

6. As stated above, defendant Nos.1 and 3 to 6 challenged the said decree for partition and separate possession passed by the learned Trial Court by filing an appeal under Section 96 of CPC which came to be registered as Regular Civil Appeal No.64 of 2018. The learned First Appellate Court has confirmed the decree passed by the learned Trial Court by recording independent reason for the same. Dissatisfied with

the said judgments and decrees defendant Nos.1 and 3 to 6 have preferred the present Second Appeal under Section 100 of the CPC.

7. Learned Advocate for the appellant Mr.S. S. Thombre has pressed into service two principal contentions. Firstly, that the property bearing Survey No.512 i.e. Gut No.306 was purchased by defendant No.1 and as such was his self acquired property. He contends that the learned Courts were at error in granting decree and possession with respect to this property. The other contention of Mr. Thombre is that assuming all the properties to be ancestral properties, the defendant Nos.4 to 6 being legitimate children of their father in view of Section 16 of the Hindu Marriage Act, 1955 will also be entitled to a share in the suit properties.

8. Per contra, Mr. Y. K. Bobade appearing for respondent No.1-plaintiff contends that a clear finding of fact is recorded by the learned Courts that Survey No.512 i.e. Gut No.306 was acquired from income derived from joint family properties and therefore the said property also a Joint Hindu Family Property. As regards the other properties, the learned Advocate contends that since the suit properties are Joint Hindu Family properties, children from second wife cannot claim share independently as co-parceners in the said properties, although, by virtue of Section 16 of the Hindu Marriage Act, 1955, they may claim

share in the ancestral property which falls to the share of their father by inheritance. He therefore, prays that the appeal may be dismissed.

9. Having heard the respective submissions as aforesaid, I am of the considered opinion that there is an unequivocal admission on the part of defendant No.1 that Survey No.512 i.e. Gut No.306, although purchased in his name was acquired out of joint family nucleus. A property acquired out of joint family nucleus, although, purchased in the name of a co-parcener, will be property of the Joint Hindu Family and not individual property of the co-parcener in whose name the property purchased. There cannot be any quarrel with this proposition of law. The findings recorded by the learned Court that Survey No.512 i.e. Gut No.306 is ancestral property, therefore, does not call for any interference.

10. As regards the other contention with respect to Section 16 of the Hindu Marriage Act, there cannot be any doubt that children begotten from second wife are legitimate children of the father. However such children can claim right only over property of the father and not properties of Joint Hindu Family in which father is a co-parcener or as the case may be Karta. Children begotten from invalid marriage cannot claim status of co-parceners in the family. Legal position in this regard is clearly laid down by the Hon'ble Supreme Court in the matter of

Revanasiddappa & Anr. Vs. Mallikarjun and Ors. reported in (2023) 10 SCC 1. The Hon'ble Supreme Court has clearly held that children begotten from an illegitimate marriage cannot claim to be co-parceners and as such they will not have any independent share in co-parcenary property. However, placing reliance on section 16 of the Hindu Marriage Act, it is held that they can claim share in the share of their father in the co-parcenary property by virtue of Section 6(3), as amended by Hindu Succession (Amendment) Act, 2005 and Section 8 of the Hindu Succession Act, 1956. In that view of the matter in my considered opinion, the learned Trial Court has rightly awarded 1/7th share each to the plaintiff, defendant No.1, defendant No.2 and defendant Nos.7 to 10 and not awarded any independent share to the defendant Nos.2 to 6.

11. In the light of the above, in my considered opinion, no substantial question of law arises for consideration in the present appeal. The Second Appeal is therefore dismissed with no order as to costs.

[ROHIT W. JOSHI J.]