



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 627 OF 2021

1] Dattatraya Ananda Salve
Age-40 years, Occupation-Agriculture,
R/o. Ghaigaon, Tq. Vaijapur,
District Aurangabad.

2] Thakubai Ananda Salve
Died Through LR.
I.e present Appellant No.1
Dattatraya Ananda Salve

..Appellants

VERSUS

- 1] Ananda s/o Sawalaram Salve
Age: 77 years, Occ. Agriculture,
R/o. Ghaigaon, Tq. Vaijapur,
Dist. Aurangabad
- 2] Savitribai w/o Ananda Salve
Age: 70 years, Occu: Household.
R/o. Ghaigaon, Tq. Vaijapur,
Dist. Aurangabad.
- 3] Gorakh s/o Ananda Salve
Age: 45 years, Occu: Agriculture,
R/o. Ghaigaon, Tq. Vaijapur,
Dist. Aurangabad
- 4] Ajay s/o Ananda Salve
Age: 35 years, Occu: Agriculture,
R/o. Ghaigaon, Tq. Vaijapur,
Dist. Aurangabad

5] Sharda @ Chabubai w/o Ashok Vanjari
Age: 39 years, Occu: Household,
R/o. Ghaigaon, Tq. Vaijapur,
Dist. Aurangabad

...Respondents

Advocate for Appellants : Mr.R.S.Sadaphule
Advocate for Respondent Nos.1 to 5 : Ms.Rakhi V.Sundale

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 28th JULY 2025

PRONOUNCED ON : 05th AUGUST 2025

FINAL ORDER :

1. Heard both sides.
2. Appellants are original-plaintiffs who are successful before the trial court in R.C.S No. 294 of 2006 for partition and possession but the decree is reversed by lower appellate court in R.C.A No. 06 of 2019 vide judgment dated 26.02.2019. They have preferred present second appeal.
3. It was recorded by earlier orders that second appeal needs consideration in view of the issues involved and reference decided by the Supreme Court in the matter of **Revanasiddappa and Ors. Vs. Mallikarjun and Ors.** reported in 2011 (11) SCC 1. Impressed by the submissions of the parties following substantial question of law was

framed :

“Whether the appellant No.1 i.e original plaintiff No.1 is entitled to seek partition in the property of respondent No.1?”

4. The matter was directed to be taken up for final hearing in pursuance of the decision rendered by the Hon’ble Apex Court in the matter of **Revanasiddappa and Ors.** (supra). Both the learned counsels showed their willingness to work out the matter finally. They did not press any other substantial questions of law.

5. Appellants filed suit for partition and possession in respect of land gat No.211 and right to take water from gat No.210. It is pleaded by them that subject matter was joint family property and in partition it was allotted to the Respondent No.1/Ananda. Appellant No.2/Thakubai is his legally married wife and Appellant No.1/Dattatraya is their son. Respondent No.2/Savitribai is not legally wedded wife and wife of Respondent No.1/Ananda. Respondent Nos.3 to 5 are their children who are illegitimate. Their request for partition was denied by the respondents. Hence, suit claiming 2/3rd share was filed.

6. Respondents contested the claim by filing written statements denying the relationship of appellant with Respondent No.1. It is

contended that Respondent No.2 is the legally wedded wife of the Respondent No.1 and remaining respondents are their children. It is contended that there is illicit relationship between Applicant No.2/Thakubai and Respondent No.1/Ananda. Appellants are said to be not entitled to any relief.

7. Appellants examined two witnesses themselves. Respondents examined three witnesses including Respondent Nos.1, 2 and Yelubai.

8. Trial court decreed the suit vide judgment dated 26.02.2019 awarding 1/3rd share to the appellant No.1. Appellant No.2 is held to be not entitled to have any share. It is specifically held that the marriage of the Respondent No.1 with Respondent No.2 is proved and she is legally wedded wife and Respondent Nos.3 to 5 are their children. It is further held that appellant No.1 is begotten from the Respondent No.1 and Appellant No.2.

9. Being aggrieved respondents preferred appeal which was allowed by common judgment and decree dated 21.12.2021. It is held that appellants failed to prove marriage between Appellant No.2 and the Respondent No.1 in terms of Section 7 Sub-section (2) of the Hindu Marriage Act,1955. It is further held that Respondent No.2 is the legally wedded wife of Respondent No.1. The appellants were

permitted to challenge the findings regarding legitimacy of the appellant No.2 without filing cross-objection. It is held that during lifetime of Respondent No.1, no share can be granted to the appellant No.1.

10. Learned counsel Mr.Sadaphule for appellants made submissions on the basis of substantial questions of law incorporated in the appeal memo while assailing judgment passed by lower appellate court. It is vehemently contended that appellant No.1 is the legitimate child and appellant No.2 is the legally wedded wife. It is submitted that appellate court should have remanded the matter to trial court to decide the status of the parties. It is further submitted that in view of decision of the Apex Court in the matter of **Revanasiddappa and Ors.** (supra), appellant No.1 is entitled to receive share in the property in the suit land *at par* with other children. It is submitted that lower appellate court committed patent illegality in overlooking the inconsistent stand of the Respondent No.1 which is exposed in his cross-examination.

11. I have considered rival submissions of the parties. The submissions of the parties need to be addressed in view of substantial questions of law framed vide order dated 23.07.2024. It is necessary to examine as to whether appellant No.1 can be treated to

be legitimate child as per section 16(1) of Hindu Marriage Act so as to qualify him for claiming partition and share in the suit land. The Hon'ble Apex Court has laid down in **Revanasiddappa and Ors.** (supra), that illegitimate child covered by Section 16(1) or Section 16(2) is entitled to have share in the property to their parents as per Section 16(3) of the Act.

12. Both the courts below have recorded that appellant No.1 is the son of the Respondent No.1 begotten from appellant No.2/Thakubai. Though the respondents have denied the relationships, there is material on record to show that he is the son besides Respondent Nos.3 to 5. It further reveals that gat No.211 was fallen to the share of Respondent No.1/Ananda and his branch.

13. Both the parties adduced oral evidence only to show marital relationship. The benefit of the decision rendered by **Revanasiddappa and Ors.** (supra) can be given to the appellants provided that they succeed in proving that there is a marriage between appellant No.2/Thakubai and the Respondent No.1. The burden of proving marriage as per Section 7 of the Act was upon the appellants. Except their oral evidence no other evidence is placed on record to show the marriage ceremony. Lower appellate court has rightly recorded the

findings that they failed to discharge the burden.

14. The written statement shows the defence that Respondent No.1 is said to have been in illicit relationship with the appellant No.2 and appellant No.1 was begotten. The pleadings and the oral evidence do not indicate that there was marriage as such between appellant No.2/Thakubai and Respondent No.1/Ananda. Though, Respondent No.1 admitted in his cross-examination that he had wrongly deposed about illicit relationship with the appellant No.2/Thakubai, the marriage between them is not established. The deposition of DW-1 and 3 do not show factum of marriage between appellant No.2/Thakubai and Respondent No.1/Ananda at any point of time.

15. The deposition of the DW-3/Yelubai carries significance because she was present in the marriage of Respondent No.1/Ananda with Respondent No.2/Savitribai. There is consistent evidence on record to show that Respondent No.1 was married with Respondent No.2 and she was legally wedded wife. The cross-examination of the witnesses fortify this fact. The trial court totally overlooked this aspect of the matter and committed patent illegality in decreeing the suit.

16. In the absence of any valid or void or voidable marriage between

appellant No.2 and Respondent No.1, it is not possible to countenance the submission that judgment of the Supreme Court in the matter of **Revanasiddappa and Ors.** (supra) would enure to the benefit of the appellants. In other words status of the appellant No.2 is that of concubine. Both the appellants can have no right to claim either partition or share in the case of partition. Learned counsel Ms.Rakhi Sundale is right in her submission that the Appellant No.1 can not claim any benefit of Section 16(3) of the Act.

17. Another facet of the matter which is totally ignored by the trial court is that during life of the Respondent No.1/Ananda, his son, albeit illegitimate, can not demand partition. The appellant No.1 can not be said to be a co-parcener. He is not entitled to claim any benefit under Section 16(3) of the Act. He can not lay any claim in the property of the joint family. I find that lower appellate court has rightly dealt with this aspect of the matter.

18. It's a matter of record the land of the joint family of respondents was acquired and both parties claimed the compensation. By interim orders the appellants were permitted to receive 1/3rd share. The respondents are entitled to receive entire compensation.

19. The findings recorded by lower appellate court can not be

faulted with. The substantial questions of law argued by learned counsel for the appellants are devoid of any merits. I have no alternative than to dismiss the second appeal. Hence, I pass following order :

ORDER

- (i) Second Appeal is dismissed.
- (ii) There shall be no order as to costs.
- (iii) The Respondents shall be entitled to receive the amount of compensation from the competent authority and they are entitled to recover the amount with accrued interest disbursed to the appellants.

[SHAILESH P. BRAHME, J.]

vsj