



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 26 OF 2022
WITH
CIVIL APPLICATION NO. 600 OF 2022
IN
SECOND APPEAL NO. 26 OF 2022

Balasaheb Kaluba Jagdale And Another
VERSUS
Salubai Alias Manda Abasaheb More And Others

Shri Bipinchandra K. Patil, Advocate for Appellant
Shri Chaitanya C. Deshpande for Respondent Nos. 1 and 2

CORAM : ROHIT W. JOSHI, J.
DATE : 25th FEBRUARY, 2025

PER COURT :

1. The respondent Nos. 1 and 2 had filed a suit for partition and separate possession being RCS No. 787 of 2009 against their father, the mother and brothers who are original defendant Nos. 1, 2 and 3 to 6 respectively. The contention in the suit is that the suit properties were ancestral properties of the defendant No. 1 and in view of amendment to Section 6 of the Hindu Succession Act vide Hindu Succession (Amendment) Act, 2005, the plaintiffs being daughters were entitled to a share in the suit properties as if they are coparceners by birth. The suit was opposed on several grounds including that as early as on 02.08.1991 itself there was a partition with respect to the suit properties. After filing of the suit the

parents i.e. defendant Nos. 1 and 2 expired. The suit came to be decided after the demise of defendant Nos. 1 and 2, parents of plaintiffs and defendant Nos. 3 to 6. The learned Trial Court was pleased to decree the suit and grant $1/6^{\text{th}}$ share each to the plaintiff Nos. 1 and 2 and defendant Nos. 3 to 6. Being aggrieved by the decree for partition, two of the brothers i.e. original defendant Nos. 4 and 5 challenged the decree for partition by filing appeal being RCA No. 71 of 2014. The said appeal came to be dismissed vide judgment and decree dated 19.08.2019 passed by the learned District Judge – 10, Aurangabad. The present second appeal is preferred challenging the said judgment and decree passed by the learned Trial Court, which in turn has been confirmed by the learned first appellate Court.

2. Mr. Patil, learned advocate for the appellants has raised a contention that there was already a partition in the family in the year 1991 itself. He points out from the findings recorded by the learned Courts that the fact of partition was specifically put to the plaintiff No. 1 during the course of her cross examination and that she had admitted that there was a partition in the family in the year 1991. He contends that although the partition is not a registered partition within the meaning of explanation to Section 6

Sub-Section (5) of the Hindu Succession Act 1956 as amended by to the Hindu Succession (Amendment) Act, 2005, the fact of partition is expressly admitted during the course of cross-examination and therefore, the suit for partition was not maintainable. He places reliance on judgment of the Hon'ble Supreme Court *Vineeta Sharma Vs. Rakesh Sharma and Others* reported in *(2020) 10 SCR 135* in support of his contention. The partition deed was not proved during the course of evidence before the learned Trial Court, however, a copy of the partition deed is filed along with application for grant of stay as Exhibit C. Mr. Patil contends that although the document was not proved and exhibited, the fact of partition was specifically admitted and therefore, the suit for partition filed by the daughters was not maintainable.

3. I have perused the partition deed produced on record by the appellants. The partition deed is a notarized document. It is dated 02.08.1991. Perusal of the partition deed indicates the father Kaluba is not a party to the said document. It is undisputed that Kaluba was a member of coparcenary of the family and as such any document of partition could not have been executed and any partition could not have been effected without Kaluba being a party

to it. It will also be worthwhile mention that although a wife is not entitled to seek partition, upon a partition of a coparcenary property, she is also entitled to receive one share as is receivable by a coparcener in a family. The mother of the parties was also alive as on the date of partition, however, she is also not a party to the partition deed.

4. In my considered opinion therefore, even if it is assumed that the partition had in fact taken place *inter se* between the four brothers that partition cannot by any stretch of imagination be said to be a legal partition. In my considered opinion, therefore, this document of partition cannot be pressed into service to not-suit the plaintiffs.

5. Apart from this another contention is raised that the several portions of the suit properties were already sold by the brothers before institution of the suit. Mr. Patil contends that plea regarding non-joinder of necessary parties was raised in the written statement and issue in that regard was also framed by the learned Trial Court. He submits that the purchasers of the suit properties were necessary parties to the suit and the suit was liable to be dismissed for non-joinder of the necessary parties.

6. As regards the arguments regarding non-joinder of necessary parties the learned Trial Court has observed in paragraph 17 of the judgment that the defendants have not mentioned the dates on which the properties were alienated. The learned first Appellate Court has also recorded in paragraph 13 of the judgment that the plea of non-joinder of necessary parties is absolutely vague and non-specific. The learned Appellate Court has recorded that the particulars with respect to the transactions, properties alienated and persons to whom the same were alienated are not disclosed in the written statement and as such the plea of non-joinder was liable to be rejected. The finding recorded by the learned Courts on the aspect of non-joinder of necessary parties are just and proper and in my considered opinion no substantial question of law arises for consideration on this count as well.

7. In view of the above, the present appeal is dismissed with no order as to costs.

[ROHIT W. JOSHI]
JUDGE

KS_Kamble/