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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 570 OF 2022
WITH
INTERIM APPLICATION NO. 17112 OF 2022
IN
SECOND APPEAL NO. 570 OF 2022**

Limbaji Shankar Patil

.....Appellant

Vs.

Vishnu Mahadev Patil
(Decd. Thr. LRs) and ors

.....Respondents

Mr. Prashant P. Kulkarni for appellant a/w Ms. Rachna Mamnani for the appellant

Mr. Chetan G. Patil a/w Mr. Bhushan Jadhav for respondent

CORAM : GAURI GODSE, J.

DATE : 12th FEBRUARY 2025

ORDER:

1. Heard learned counsels for the parties. This appeal is preferred by heirs and legal representatives of defendant no. 4 to challenge the dismissal of the cross objections filed in the first appeal preferred by defendant no. 2. The trial Court had decreed the suit for partition and separate possession. The plaintiff and defendant nos. 1 to 3, 6 and 7 are held entitled to 1/6th share in the suit properties. Defendant no. 2

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had filed the first appeal. The first Appellate Court has dismissed the first appeal and the cross objections. Hence, this appeal by heirs and legal representatives of defendant no. 4.

2. Learned counsel for the appellant submits that defendant no. 2 in his written statement had pleaded that two of the suit properties i.e. Gat No. 111 and 835 belonged to the family of Ragho Patil and thus, the same could not have been included as the suit properties for partition and separate possession of the properties belonging to Mahadev Patil. He submits that defendant no. 4 was denied share on the ground that he was given in adoption to the family of Ragho Patil. He submits that in the absence of any findings of any valid adoption of defendant no. 4, he could not have been denied share in the suit properties.

3. The learned counsel for the appellant further submits that though defendant no. 2 had filed the first appeal challenging the partition decree, the first Appellate Court has not considered the pleadings of defendant no. 2 regarding inclusion of two properties of Ragho Patil's family in the partition suit. He further submits that in the cross objections, appellant had raised the objection challenging the adoption

of defendant no. 4 as pleaded by the plaintiffs. He submits that the first Appellate Court dismissed the cross objections only on the ground that there was no written statement filed by defendant no. 4. He, thus submits that the second appeal would require consideration as the aforesaid grounds raise substantial questions of law.

4. Learned counsel appearing for the original plaintiffs submits that though defendant no. 2 had pleaded that two of the suit properties belonged to the family of Ragho Patil, there was no evidence led to support these pleadings. He submits that the trial Court held that the pleadings regarding objection raised with regard to two of the suit properties, was not proved by defendant no. 2. He submits that defendant no. 2 has not challenged dismissal of his appeal. He further submits that the cross objections were filed only raising the grounds regarding adoption. He, thus, submits that the first Appellate Court has rightly dismissed the cross objections for want of any pleadings to support the grounds raised in the cross objections.

5. I have perused the papers of the second appeal. The relations between the parties is not in dispute. Defendant no. 4 was added as party defendant with the pleadings that he would not be entitled to any

share in the suit property as he was given in adoption to Ragho Patil. It is not in dispute that defendant no. 4 though appeared in the suit, failed to file any written statement. Hence, the suit proceeded without written statement of defendant no. 4.

6. Based on the rival pleadings, the trial Court framed the issues and held that the suit properties were ancestral properties and thus, the plaintiff and defendant nos. 1 to 3, 6 and 7 were held entitled to 1/6th share. The partition decree was challenged by defendant no. 2 by filing the appeal. In the said appeal, the heirs and legal representatives of defendant no. 4 have filed cross objections. A perusal of the cross objections indicate that the grounds raised by the appellants are only regarding disputing the adoption of defendant no. 4. The objections regarding two of the properties belonging to Ragho Patil being included in the suit property was not a ground of objection raised by the present appellants before the first Appellate Court.

7. Considering the nature of objections filed by the appellants, the first Appellate Court has rightly held that in the absence of any written statement, the objections cannot be considered. Since there are no pleadings raising objections to the theory of adoption as pleaded by

the plaintiffs, the first Appellate Court has rightly dismissed the cross objections for want of any supporting pleadings. In the absence of any pleadings, the objections to the adoption of defendant no. 4 could not have been considered by the first Appellate Court for the first time in the appeal. Thus, in the absence of any pleadings, the issue regarding the objection to the adoption of defendant no. 4 cannot be considered, in this second appeal.

8. The grounds raised on behalf of the appellants would therefore, not require any consideration by this Court as they do not raise any substantial question of law.

9. The second appeal does not raise any other substantial question of law. Hence, the second appeal is dismissed.

10. In view of dismissal of second appeal, Interim Application No. 17112 of 2022 is disposed of as infructuous.

[GAURI GODSE, J.]