

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.339 OF 2001

Smt. Sushilabai Chintaman Tambe & Ors.

...Appellants

Versus

Narendra Bhaskar Bhatavadekar & Anr.

...Respondents

Mr. S. G. Karandikar, for the Appellants.

Mr. R. P. Behere, for the Respondent No.1.

CORAM: MADHAV J. JAMDAR, J.

DATED: 1st JULY 2025

P.C.:

1. Heard Mr. Karandikar, learned Counsel appearing for the Appellants and Mr. Behere, learned Counsel appearing for the Respondent No.1.

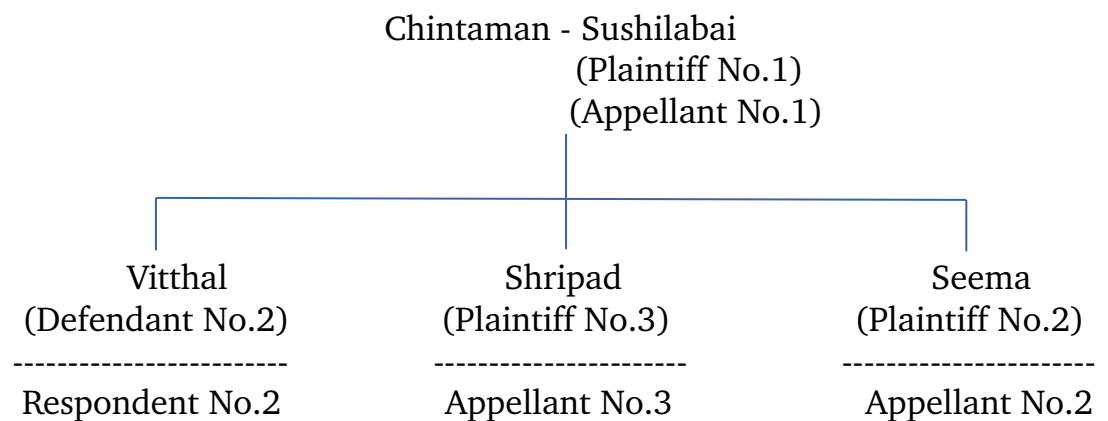
2. A learned Single Judge by order dated 27th August, 2001 admitted the Second Appeal on the following substantial question of law:

“Whether the Courts below were justified in holding that defendant No.2 was competent to sell the suit property to defendant No.1, especially, when the suit property was not a joint family property since it was inherited after the death of Yamunabai in 1962?”

3. Mr. Karandikar, learned Counsel submitted that Defendant No.2 was not competent to sell the suit property to Defendant No.1, as the suit property was not a joint family property. Learned Counsel submitted that the suit property was inherited after the death of

Yamunabai and therefore the same is not the joint family property. He submitted that Defendant No.2 could not have sold the property in his capacity as Karta. He submitted that, the impugned judgment and decrees are required to be quashed and set aside and the Regular Civil Suit No.83/1988 filed by the present Appellant is required to be decreed.

4. Before considering the substantial question of law framed by a learned Single Judge, it is necessary, to set out the genealogy of the family.



5. Thus, admittedly the Plaintiffs and Defendants are from the same family. Plaintiff No.1 is the mother of Plaintiff No.2, Plaintiff No.3 and Defendant No.2. The Defendant No.2, by sale deed dated 10th May, 1985 sold the suit property to Defendant No.1 i.e. Respondent No.1. The Respondent No.1 has sold part of the suit property to Defendant No.3. At this stage only, it is required to be noted that Respondent No.3 has passed away and Appeal against him has abetted.

6. Perusal of the record shows that, both the Courts have concurrently held that, Defendant No.2 was the eldest male member in the joint family and the sale was for legal necessity and has been executed by Defendant No.2 in his capacity as Karta of the joint family. Even assuming that the Defendant No.2 is not the Karta of the joint family property then also the property which has been sold is almost equal to admitted one-fourth share of Defendant No.2. It is an admitted position that entire property belonging to the joint family has not been sold. Thus, in effect, there is no prejudice to the Plaintiffs.

7. In fact, in the plaint, Plaintiffs have specifically prayed that the said sale deed dated 10th May, 1985 be declared as not binding on the Plaintiffs' three-fourth share. It is also required to be noted that the Plaintiffs have only sought the declaration that the said sale deed be declared as illegal and null and void and that the same is not binding on three-fourth share of the Plaintiffs. However, in the plaint no further reliefs have been sought. The Plaintiffs have not sought partition and separate possession.

8. In view of the concurrent findings recorded by both the Courts, which have been arrived at on the basis of the evidence on record and for the above reasons there is no substance in the Second Appeal.

9. The Second Appeal is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]