

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.359 OF 2012

Santosh Vitthal Dhumal & Anr.	...Appellants
<i>Versus</i>	
Satyabhama Mukund Nawale & Ors.	...Respondents

Mr. Somnath Iyer i/b. Mr. S. S. Salunkhe, for the Appellants.
Mr. Akshay P. Shinde, for the Respondent No.1.
Mr. Sujeet Bugade, for the Respondent Nos.2 and 3.

CORAM: MADHAV J. JAMDAR, J.
DATED : 17th JULY 2025

JUDGMENT:

1. Heard Mr. Iyer, learned Counsel appearing for the Appellants, Mr. Shinde, learned Counsel appearing for the Respondent No.1 and Mr. Bugade, learned Counsel appearing for the Respondent Nos.2 and 3.

2. The challenge in this Second Appeal is to the legality and validity of the Judgment and Decree dated 5th July 2011 passed by the learned District Judge-1, Solapur in Civil Appeal No.76 of 2007. A learned Single Judge while admitting the Second Appeal

by order dated 14th June 2012 has framed the following substantial questions of law:

“a. Whether the ld. Lower Appellate Court is right in holding that the Appeal is maintainable without joining all necessary parties and setting aside the Judgment passed by the Trial Court.

b. Whether the ld. Lower Appellate Court is right in holding that Rukmini is not legally wedded wife of Vitthal, when specially, the evidence on record i.e. ration card, pan card, election card and other documents clearly shows that she is wife of Vitthal”.

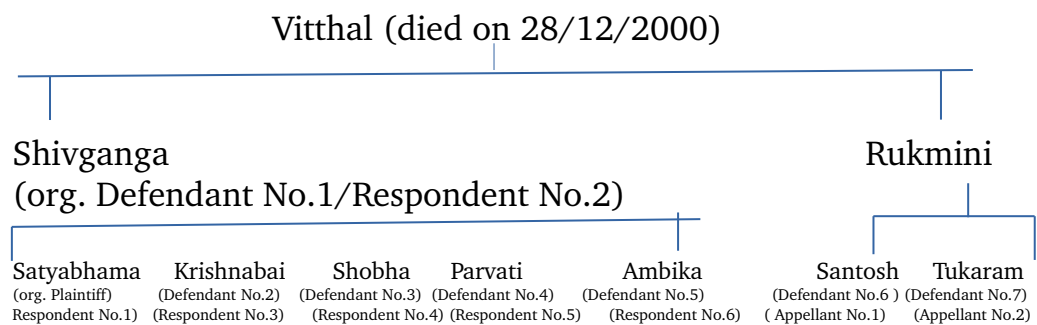
3. By consent of the parties, the following additional substantial question of law is framed:

c. Whether the Appellant No.1 (Defendant No.6)- Santosh and Appellant No.2(Defendant No.7)- Tukaram are entitled to the share in the suit properties?

4. All the learned Counsel have advanced submissions on the substantial questions of law framed earlier by order dated 14th June 2012 and also on the additional substantial question of law framed as above.

5. Before considering the substantial questions of law raised in this Second Appeal, it is necessary to set out certain factual aspects.

6. The genealogy of the family is as follows:



7. The Plaintiff - Satyabhama i.e. one of the daughter of Vitthal filed Regular Civil Suit No.492 of 2002 seeking 1/8 share in the suit property. It is the contention of the Plaintiffs that Shivganga i.e. Defendant No.1 is the wife of Vitthal and the Plaintiff and Defendant No.2 to 5 are daughters of Vitthal and Shivganga. It is the further case of the Plaintiffs that Rukmini started staying with Vitthal since the year 1971 and Defendant Nos.6 and 7 are illegitimate sons of Vitthal and Rukmini is their mother.

8. The learned Trial Court by the Judgment and Decree dated 15th January 2007 dismissed the said Regular Civil Suit No.492 of 2002. The learned Appellate Court by the Judgment and Decree dated 5th July 2011 set aside the Judgment and Decree dated 15th January 2007 of the learned Trial Court and decreed the suit by directing that the Plaintiff as well as Defendant Nos.1 to 5 are entitled for 1/6 share in the suit land. The said decree of the learned First Appellate Court is challenged in this Second Appeal by the original Defendant No.6-Santosh and the original Defendant No.7-Tukaram.

9. Learned Appellate Court has held that the suit lands are ancestral lands. In fact, as far as the said issue is concerned, the concurrent finding is recorded by both the Courts. Learned Appellate Court while denying the share to the Defendant Nos.6 and 7 i.e. present Appellants has held that the Appellants failed to prove the marriage between Vitthal and Rukhmini and as there was no marriage between Vitthal and Rukhmini, the Appellants are not entitled for share of deceased Vitthal.

10. It is the contention of learned Counsel appearing for the Appellants that the circumstances on record clearly shows that the Rukmini is legally wedded wife of Vitthal. However, learned Counsel submits that even if said marriage is held to be null and void, then also the Appellants have got share in the suit property. To substantiate the said contention learned Counsel appearing for the Appellants has relied on the decision of the Supreme Court in the case of *Revanasiddappa & Anr. vs. Malliarjun & Ors.*¹

11. As far as the contention that the Rukmini is legally wedded wife of Vitthal the same cannot be accepted as admittedly, Shivganga is legally wedded wife of Vitthal. It is also an admitted position that during subsistence of the marriage between Vitthal and Shivganga, said alleged marriage took place between Vitthal and Rukmini and therefore, the said alleged marriage is null and void. However, admittedly, Appellants i.e. Defendant Nos.6 and 7 are sons of Vitthal and Rukhmini and therefore, it is necessary to decide whether they are entitled for any share in the suit property.

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12. In the said decision of the *Revanasiddappa* (supra), the conclusions are recorded in paragraph 81. The conclusion No.81.1 reads as under:

“81.1. In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether : (i) such a child is born before or after the commencement of the amending Act, 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;”

Thus, a child of a marriage which is null and void or illegitimate under Section 11 is statutorily conferred with legitimacy under Section 16 of the Hindu Marriage Act, 1955.

13. The evidence on record clearly shows that since 1971-1972, Rukhmini was staying with Vitthal and Defendant No.6 - Santosh and Defendant No.7 - Tukaram are born out of her relationship with Vitthal. The evidence on record further shows that Vitthal passed away on 28th December 2000. The suit has been filed in the year 2002. Even in the plaint also it is mentioned that since 1971, Rukhmini was staying along with Vitthal and the Defendant Nos.6 and 7 are illegitimate children of Vitthal. Thus, the evidence on

record clearly shows that Rukhmini was staying with said Vitthal since about 1971 till his date of death i.e. 28th Deceased 2000 and thereafter also continued to stay in the house of the Vitthal. There are two children born out of the said relationship. The evidence on record clearly shows that there is marriage between said Vitthal and Rukhmini. As the said marriage was during the lifetime of Shivganga i.e. first wife of Vitthal, the said marriage is null and void. However, in view of the law laid down by the Supreme Court in the case of *Revanasiddappa* (supra), the children born out of the relationship of such null and void marriage have been statutory confirmed the legitimacy in terms of Section 16(1) r/w Section 11 of the Hindu Marriage Act.

14. Thus, in the light of the above factual position and evidence on record, it is necessary to consider the substantial questions of law involved in this Second Appeal.

15. The first substantial question of law is whether the Id. Lower Appellate Court is right in holding that the Appeal is maintainable without joining all necessary parties and setting aside the Judgment passed by the Trial Court. Perusal of the record shows

that except Rukhmini, all other legal heirs and representatives of deceased Vitthal have been made parties to the suit. In fact, the present Appellants i.e. Santosh and Tukaram who are the sons of Rukhmini and Vitthal are made parties to the suit. As far as Rukhmini is concerned, although evidence on record shows that marriage took place between Vitthal and Rukhmini, however, admittedly, the said marriage is second marriage performed during the subsistence of marriage between first wife-Shivganga (Defendant No.1) and Vitthal. Thus, it is very clear that the marriage between Vitthal and Rukmini is illegal and null and void marriage. Thus, Rukhmini is not necessary party to the suit. Therefore, the first substantial question of law is required to be answered in that manner.

16. The second substantial question of law is whether the Id. Lower Appellate Court is right in holding that Rukmini is not legally wedded wife of Vitthal, when specially, the evidence on record i.e. ration card, pan card, election card and other documents clearly shows that she is wife of Vitthal. The evidence on record showing that Rukhmini started staying with Vitthal since 1971 and she stayed with Vitthal till his death i.e. till 28th

December 2000 and thereafter, continued to stay at the house of Vitthal and it has been further also established that out of the said relationship, Rukhmini has two sons i.e. Santosh and Tukaram. Therefore, the evidence on record shows that the marriage took place between Vitthal and Rukminin. However, admittedly, the marriage between Vitthal and Rukhmini is second marriage performed during the subsistence of first marriage with Shivganga. Admittedly, there is no evidence that marriage between the first wife-Shivganga and Vitthal has been dissolved by decree of divorce. Thus, marriage between Vitthal and Rukhmini is null and void marriage. Thus, the second substantial question of law is required to be answered in the said manner.

17. As far as third substantial question of law framed herein above, it is required to be noted that as held in the case of *Revanasiddappa* (supra), the children born out of null and void marriage are conferred legitimacy. It is also required to be noted that even in the plaint, which has been filed by the Plaintiff/Respondent No.1-Satyabhama, she has sought 1/8 share. Thus, in effect, the Plaintiff has admitted share of present

Appellants i.e. Santosh and Tukaram. Thus, the Appellants are entitled to the share in the suit property.

18. Thus, in view of the above discussion, the Second Appeal is allowed in the following terms:

- i. The Judgment and Decree of the learned District Judge-1, Solapur passed in Civil Appeal No.76 of 2007 dated 5th July 2011 stands modified in the following manner:

“O R D E R

Appeal is allowed with costs.

The Judgment and decree passed by learned IV Joint Civil Judge, J.D., Barshi in Civil Suit No.492/202 dated 15.1.2007 is hereby set aside.

The suit of the plaintiff is hereby decreed with costs.

*The plaintiff as well as **defendant Nos.1 to 7** are entitled to have **1/8th** share in land at No.1232/1, 1232/2, 1232/3 and house property bearing No.35 all situated at village Uplai Thonge, Tal. Barshi.*

The decree be sent to Collector, Solapur for effecting partition and separate possession of lands as mentioned above as provided under Section 54 of C.P.C.

Court Commissioner be appointed for effecting partition of house bearing No.35 situated at village Uplai Thonge Tal.; Barshi.

Decree be drawn up accordingly”.

19. At this stage, Mr. Bugade, learned Counsel appearing for the Respondent Nos.1 to 3 i.e. original Plaintiff and Defendant Nos.2 and 3 states that during the pendency of the proceedings before the learned First Appellate Court, the Appellants have sold 2 acres land bearing Survey No.1232/2. Mr. Iyer, learned Counsel appearing for the Appellants, on instructions of the Appellant No.2- Tukaram who is present in Court, confirms the same. Accordingly, it is directed that while executing the decree, the said land of 2 acres out of Survey No.1232/2 be allotted in the share of Appellants i.e. Santosh (Defendant No.6) and Tukaram (Defendant No.7).

20. The Second Appeal is disposed of in above terms, with no order as to costs.

[MADHAV J. JAMDAR, J.]