

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 345 OF 2016
WITH
CIVIL APPLICATION NO. 657 OF 2016

Mr. Vilas Gangaram Bhopale And Ors. ...Appellants
Versus
Mrs. Kamal Mahukar Gaikwad And Ors. ...Respondents

Ms. Tejas Kapre i/b Mr. J.S. Kapre for the Appellants.
Mr. Ashutosh Kulkarni a/w Mr. Akshay Kulkarni for Respondent Nos. 1 to 3.

CORAM : M.M. SATHAYE, J.
DATE : 23rd JUNE, 2025

P.C. :

1. Heard learned Counsel for the Appellants and learned Counsel for Respondent Nos. 1 to 3. Perused the record.

2. Special Civil Suit No. 287 of 2012 was filed for partition and separate possession by one of the brothers (Respondent No. 4) seeking partition of the suit properties. Defendant Nos. 1 to 3 (Appellants) are other brothers and Defendant Nos. 4 to 6 (Respondent Nos. 1 to 3) are sisters in the family. The Trial Court partly decreed the suit granting 8/35th share to the Plaintiff/brother in the suit property under the Judgment and Decree dated 07.04.2014. The sisters in the family (Respondent Nos. 1 to 3) challenged the said Decree by filing Regular Civil Appeal No. 150 of 2014. The Appellate Court by impugned Judgment and Decree dated 01.09.2015 allowed the appeal and modified the Judgment and Decree of the Trial Court, in essence,

SNEHA
NITIN
CHAVAN

Digitally signed
by SNEHA NITIN
CHAVAN
Date: 2025.06.25
10:50:18 +0530

equalizing the shares in the family and declaring that all the brothers and sisters have 1/7th share in the suit properties. 3 out of 4 brothers have filed the present Second Appeal challenging the Judgment and Decree of the Appellate Court.

3. Learned Counsel for the Appellants submitted strenuously that Appellate Court was not justified in granting equal share to the sisters, on the ground that amended Section 6 of the Hindu Succession Act, 1956 would only apply prospectively. She relied on Judgment of **Prakash and Ors v/s. Phulavati and Ors. [(2016) 1 Mah.L.J. 1]** in support of her claim.

4. Learned Counsel for Respondent Nos. 1 to 3, on the other hand, submitted that the Judgment of **Prakash v/s. Phulavati (supra)** has been rendered after the impugned Decree was passed. However, during the pendency of the appeal, the law has now been settled by the Hon'ble Supreme Court under the Judgment of **Vineeta Sharma v/s. Rakesh Sharma [AIR 2020 SC 3717]**. He submitted that in view of the pronouncement of the Supreme Court on the subject at hand, no question of law is required to be considered in this appeal.

5. I have considered the submissions and perused the Judgment of the Appellate Court. It is seen that impugned Judgment and Decree is dated 01.09.2015 and the judgment of **Prakash v/s. Phulvati (supra)** was rendered on 16.10.2015. The Appellate Court has relied upon the Judgment in the case of **Badrinarayan Bhandari V/s. Omprakahsh Bhandari (AIR 2014 Bom, 151)** and has held that original Defendant Nos. 4 to 6, who are daughters in the family, would be entitled to get equal shares i.e. 1/7th share in the suit property.

6. The aspect of prospective application of section 6, as argued by learned Counsel for the Appellants stands concluded by the Hon'ble Supreme Court, in paragraph 129 of **Vineeta Sharma v/s. Rakesh Sharma (supra)**, which reads thus :

“129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Successions Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) xxxxxxxx”

7. In that view of the matter, no question of law, much less substantial question of law, is arising for consideration. The shares granted to parties are in accordance with law pronounced under **Vineeta Sharma v/s. Rakesh Sharma (supra)**. There is no merit in the Appeal and the same is accordingly dismissed.

8. In view of the dismissal of the Second Appeal, the Civil Application is also dismissed. No order as to costs.

(M.M. SATHAYE, J.)