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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 215 OF 2022
WITH
CIVIL APPLICATION NO. 230 OF 2019

Dhanraj Maruti Jadhav ... Appellant/Applicant

vs.

Shalan Vasant Rao Jadhav and Ors ... Respondents

Mr. Dilip Shinde for Appellant.

Mr. Abhishek T Ingale i/b. Mr. Umesh Mankapure for Respondent
Nos. 1 and 2.

Mr. Pradeep J. Thorat i/b. Ms. Aditi S. Naikare for Respondent Nos.
3 to 6.

CORAM : GAURI GODSE, J.

DATED : 30th APRIL 2025

ORDER:

1. By order dated 21st March 2025, notice for final disposal of the second appeal at admission stage was issued by framing the following substantial question of law:

“(I) In view of the well settled principles on the amended Hindu Succession Act, 1956 as per the decision of the Hon’ble Apex Court in the case of Vineeta Sharma Vs. Rakesh Sharma and Others¹, whether the trial court’s decree would require modification in as much as all the children of Bhanudas would be entitled to equal share?”

2. Notice for final disposal is served upon all the respondents and the respondents are represented through advocate.

3. The suit was filed by respondent nos. 1 and 2 for partition and separate possession. In the suit, defendant no.6 had filed a counter claim for declaration that is out of suit property at Gat No. 70 was belonging exclusively to him and he was the sole owner. Defendant no.2 also prayed that the original holder i.e. Bhanudas has Willed out his share to defendant no.6 i.e. Dhanraj. Hence, he has prayed for declaration that he would be entitled to the undivided share of Bhanudas.

4. The suit was decreed in respect of all the suit properties except Gat No. 70. The plaintiffs were held entitled to 3/15th share each in the suit property. Defendant no.1 i.e. Maruti was held entitled to 6/15th share and defendant no.2A to 2C were entitled to 1/15th share each. This decree was challenged by defendant no.1 i.e. Maruti. A separate appeal was preferred by defendant no.6 as his counter claim was rejected. The appeal filed by defendant no.1 in the district court is dismissed. Defendant no.6's, appeal is partly allowed. Thus, by partly allowing counter claim of defendant no.6 he is declared as sole owner of Gat No. 70. Since, defendant no.6's prayer for declaration of his entitlement to Bhanudas's undivided

share by way of Will is refused, the second appeal is filed by defendant no.6.

5. Learned counsel appearing for the appellant submits that in view of the well settled legal principles in the decision of *Vineeta Sharma*, all the children of Bhanudas were entitled to equal share. He submits that the trial court instead of granting equal share to three daughters of Bhanudas, they have been granted share in the Bhanudas's 1/3rd share. He submits that in the event, the trial court decree is modified and all the three daughters of Bhanudas are given equal share, in view of the well settled legal principles, the appellant would not press for his claim based on the Will executed by Bhanudas.

6. Learned counsel appearing for the plaintiffs as well as learned counsel appearing for defendant nos. 1, 2A to 2C also agree with the submissions made on behalf of the appellant. He on instructions of the said defendants submits that the said defendants would not have objection if the suit property is equally divided amongst all the five children of Bhanudas. So far as defendant nos. 3 to 5 are concerned they are daughters of Bhanudas and are separately brought on record also as defendant nos. 2A to 2C. So far as defendant no.7 is concerned, he is not the member of the family and

he had claimed right in respect of Gat No. 70 which is held to be exclusive property of the appellant i.e. defendant no.6. Hence, at the time of issuing notice for final disposal of the second appeal, it was held that notice to respondent no.7 would not be necessary.

7. So far as Gat No. 70 is concerned, the decree passed by the first appellate court holding that the defendant no.6 is the sole owner of Gat No.70 is not challenged by defendant no.7. Hence, for deciding the second appeal, notice to defendant no.7 is not necessary. Thus, the second appeal can be disposed of by consent of the parties.

8. Learned counsels appearing for the parties, submits that in view of the legal principles settled by the Hon'ble Apex Court in the case of *Vineeta Sharma*, nothing requires for further consideration by this court and thus, all five children of Bhanudas i.e. Maruti (defendant no.1), deceased Vasant (plaintiff nos. 1 and 2 are the heirs of deceased Vasant), Vimal (defendant no.2A), Kamal (defendant no. 2B), Anusuya (defendant no.2C) would be entitled to equal share in the suit property except Gat No. 70. Hence, the second appeal is allowed by passing the following order:

- I) The judgment and decree dated 19th September 2018, passed by the learned District Judge, Sangli in Regular Civil

Appeal No. 448 of 2011 and Regular Civil Appeal No. 449 of 2011 arising out of judgment and decree dated 26th October 2004 passed by the learned Joint Civil Judge, Junior Division, Islampur in Regular Civil Suit No. 430 of 1986 is modified as under:

- i) The plaintiffs would be entitled to 1/5th share jointly.
- ii) Defendant no.1, defendant no.2A, defendant no. 2B and defendant no. 2C will be entitled to 1/5th share each.
- iii) The aforesaid modification for partition and separate possession is in respect of the suit properties save and except Gat No. 70.
- iv) The parties are therefore entitled to partition and separate possession in the aforesaid terms.

9. The second appeal is allowed in the aforesaid terms with no orders as to cost. Decree to be drawn accordingly.

10. In view of disposal of the appeal, the pending application is disposed of as infructuous.

(GAURI GODSE, J.)