



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.600 OF 2024

Alka Jayantilal Shah and Others.

...Appellants.

Versus

Apurva Shah and Another.

...Respondents.

Mr. Bharat Gandhi i/b Swapnil Newaskar for the Appellant.
Mr. Sandeep Sharma for the Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : March 11, 2025.

P. C. :

1. First Appeal is preferred against the judgment dated 13th March 2023 passed by the trial Court decreeing the suit and declaring that Plaintiff is having 1/5th share in 50% share of his deceased father in the suit flat and for partition and separate possession.
2. Facts of the case are that the Plaintiff is the son of deceased Jayantilal and the Defendants were the mother, brother and sisters of Plaintiff. The Plaintiff came with the case that the suit flat was purchased by his father with his own income and the name of mother was recorded in the share certificate out of love and affection. Said Jayantilal died intestate on 27th April 2006 and the Plaintiff claimed 1/5th share in the 50% share of his father in the suit flat. As the Society deleted the name of Defendant No.1-mother and nominated

Defendant Nos.2 and 3, the Plaintiff apprehended denial of his share and issued notice after becoming aware of the same in July 2013.

3. Though the Defendant Nos.1 to 4 appeared in the suit and filed written statement, they did not step into the witness box and therefore their case could not be considered.

4. The Plaintiff led evidence and produced documents. The Trial Court considered the evidence adduced by the Plaintiff and accepted the case of Plaintiff that his father was having 50% share in the suit flat and the Plaintiff being the son of deceased, is having a share in the suit flat and has determined the share of Plaintiff as $1/10^{\text{th}}$ share in the entire flat.

5. Learned Counsel appearing for the Appellant would submit that the share certificate shows the name of deceased along with his wife. He would further submit that the Will was executed by the deceased leaving the property in favour of his wife. He would submit that the Petition for Probate of Will of deceased was dismissed for default. He would further submit that suit was barred by limitation as plaintiff sought declaration of $1/5^{\text{th}}$ share in 50% share of deceased father and declaratory suit had to be filed within three years.

6. As the Defendants failed to step into witness box, their defence cannot be considered. From the Plaintiff's evidence, nothing is demonstrated to show that the Plaintiff has failed to prove that he is

entitled to share in his deceased father's 50% share in the suit flat. The only objection raised is about limitation. From perusal of plaint, it is evident that suit was one filed for partition and separate possession. It is specifically deposed that in the year 2013, the Plaintiff became aware of the deletion of name of Defendant No.1 from share certificate and nomination of Defendant Nos.2 and 3 and the suit filed in 2014 was within limitation. Based on the documentary evidence, Trial Court has rightly held that the deceased had died intestate and as the relationship was not denied the Plaintiff was held entitled to 1/10th share out of 50% share. The Trial Court did not rightly accept the case of Plaintiff that though the suit flat stood in the name of deceased Jayantilal and his wife, the suit flat was purchased by his father out of his own income.

7. In the light of above, there is no merit in the First Appeal. First Appeal stands dismissed.

8. In view of the disposal of First Appeal, nothing survives for consideration in the pending civil/interim applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]