

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 827 OF 2024
WITH
INTERIM APPLICATION NO. 16104 OF 2024

Prakash Shantaram Kasbe And OrsAppellants
Versus
Nandu Suresh Mahale And Ors ...Respondents

Mr. Prashant Patil for the Appellants.
Mr. Sachin Gite for Respondents.

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

P.C. :

1. Heard learned counsel for the Appellants and learned counsel for the Respondent Nos. 1 and 2 /original Plaintiffs.
2. The Appellants are original Defendant Nos. 4 to 6 in a Reg. Civil Suit No. 187 of 2013 filed by Respondent Nos. 1 and 2 for partition, separate possession and permanent injunction. The parties are peculiarly related to each other, inasmuch as Govind is the common ancestral who had 2 sons by named Shantaram and Kacharu amongst other children of Govind. Kacharu is Defendant No. 3. Shantaram married Indubai who is the first wife and from the said wedlock, Plaintiffs (Nanda and Manisha) were born. The present Appellants are sons and daughter born from Defendant No.7 Savitribai, who is the second wife of Shantaram. There is no dispute about this relationship. The daughters from the first wife sued the father, mother and uncle for partition of their shares.

3. Parties led evidence and by Judgment and Decree dated 28.09.2021, the suit was decreed and Defendant No.1 Shantaram was directed to handover to each of the Plaintiffs, 1/4th share in the suit properties. Defendants are also restrained from disposing of suit properties or creating 3rd party interest therein. The Trial Court has come to a clear conclusion in paragraph 16 of its judgment that there was partition between Defendant No. 1 (Shantaram) and his brother Defendant No. 3 (Kacharu) and Defendant No. 1 was cultivating the suit properties separately and independently. It is therefore common ground before the Court that Shantaram received the suit properties in partition between Shantaram and Kacharu.

4. This Judgment and Decree of the Trial Court has not been challenged by Defendant No. 3 Kacharu, who had also not entered witness box. Only present Appellants challenged it by filing Civil Appeal No. 98 of 2021.

5. During the pendency of the Appeal, Shantaram died and his name was deleted. By the impugned Judgment and Decree dated 05.03.2024, the appeal came to be dismissed confirming the decree of the Trial Court.

6. In these circumstances, the Appellants are before this Court in Second Appeal.

7. Learned Counsel Mr. Patil appearing for the Appellants contended that after death of Shantaram, since the shares are crystalised, the Appellants ought to have been held entitled to share in the entire suit properties. He relied upon the Judgment of this court in

the case of **Vasant Kashinath Salve v/s Moreshwar Bhujangrao Niwalkar (Second Appeal No. 479 of 2019 Order dated 17.10.2024)**. Relying on paragraphs 18 and 21 thereof, it is contended that the suit properties as received by Shantaram must be held as his 'self acquired property' and therefore, by virtue of Section 16 of the Hindu Marriage Act, 1955, the Appellants must be given their share in the entire suit properties.

8. Learned counsel for Respondent Nos. 1 and 2, Mr. Gite, on the other hand, submitted that Section 16 of the Hindu Marriage Act, 1955 would squarely apply to Appellants (being children from second wife), however, it can apply only to the extent of Shantaram's 1/4th share (being the property of the father) and no share can be given to them in remaining part of the suit properties. He submitted that judgment relied upon by the Appellants is distinguishable.

9. I have considered the submissions carefully. Following substantial question of law arises for consideration :

“Whether the Appellate Court was justified in maintaining the decree granting share only to daughters of the first wife and excluding the Appellants (children of second wife), even from the share of the father, in the teeth of section 16 of the Hindu Marriage Act, 1955?”

10. At this stage, learned counsel for the Respondents/Plaintiffs Mr. Gite submits on instructions, that if the share of the Appellants is restricted to share of Shantaram (i.e. 1/4th share in the suit properties), Respondent Nos. 1 and 2/Plaintiffs have no objection.

11. In view of the statement, the **Appeal is admitted** on the

aforesaid question of law and taken up for final hearing immediately.

12. Perusal of the Judgment relied upon by the Appellants - **Vasant Vs. Moreshwar (supra)** indicates that this Court has considered various provisions of the Hindu Succession Act, 1956 and has held that after the said Act came into force, if a male inherits property from his ancestor by virtue of Section 8, the said property assumes 'character of self acquired property' and does not remain joint family property. However, in the facts of the present case, Shantaram has received the suit properties, not by succession under Section 8 of Hindu Succession Act, 1956, but as a coparcener entitled to right by birth in the family under Section 6, between Shantaram, Kacharu and Govind. Therefore, the nature of the suit properties in the hands of Shantaram cannot be treated as self acquired property under Section 8 of Hindu Succession Act, 1956. In that view of the matter, the said judgment/case-law does not advance the case of the Appellants, in the peculiar facts of this case.

13. As already indicated above, Section 16 of the Hindu Marriage Act, 1955 provides for legitimacy of children of void and voidable marriage and sub-section 3 thereof does not exclude the property of the parents (in the present case father – Shantaram) but excludes other properties (in the present case that of Plaintiffs and their mother). The judgment relied upon by learned counsel for Respondent Nos. 1 and 2 in the case of **Ravansiddhappa and Anr. v/s Mallikarjun and Ors. [(2023) 10 SCC 1]**, squarely applies to the facts of the present case. Therefore the Appellants being children born from void or voidable marriage with Defendant No. 7, will get share from the property of the Appellant i.e. their father Shantaram.

14. In that view of the matter, the Appellants are entitled to share in 1/4th share of Shantaram in the suit properties. The said share has not been given to the Appellants. For the aforesaid reasons, as also for the reason of 'no objection' given by Respondent Nos. 1 and 2, the impugned order is required to be interfered and the decree needs to be modified to that extent.

15. In the result, the Second Appeal succeeds partly and following order is passed.

ORDER

(i) The Appellants each shall be entitled to 1/6th share in 1/4th share of Shantaram. In other words, the Appellants each shall be entitled to 1/24th share in the suit properties.

(ii) The Plaintiffs and Defendant No.2 each shall also be entitled to 1/6th share in 1/4th share of Shantaram i.e. 1/24th additional share over and above the share granted by the Trial Court. Therefore, Plaintiffs and Defendant No.2 each shall be entitled to 7/24th share (1/24th + 1/4th) in the suit properties.

(iii) The Second Appeal is partly allowed in the above terms and the decree is modified to the aforesaid extent. Necessary Decree be drawn up.

(iv) No order as to costs.

16. In view of disposal of the Second Appeal, the interim application is disposed of in above terms.

17. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)