



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.231 OF 2022

APPELLANTS : 1 Droupadabai Wd/o Ramsingh Dabre,
Aged about 80 years, Occupation :
Agriculturist (since deceased being
expired on 17.1.2011)

2. Ramesh s/o. Ramsingh Dabre, Aged
about 60 years, Occupation :
Agriculturist, (since deceased being
expired on 4.12.2020) through his
legal heirs

Lr.s. of Ori. Plaintiffs

i) Shri Bhavesh s/o Ramesh Dabre,
aged about 37 years, Occupation :
Agriculturist, R/o at post Pathrot,
Thakre Plots, Tahasil Achalpur, District:
Amaravati,

ii) Smt. Pushpa w/o. Vilasrao Dongre
Aged about 39 years, Occ: Household,
R/o Indira Nagar, at Bus Stand,
Pathrot, Tahasil Achalpur, District :
Amravati

iii) Mrs. Anita w/o Kanhayalal Dhakad,
Aged about 40 years, Occ: Household,
R/o. Ludhawali Madakpura, Behind
Warehouse, Shivpuri, (Madhya
Pradesh)

..VERSUS..

RESPONDENTS : 1) Santosh s/o. Ruprao Rongare, Aged
Ori. Defendants. about 37 years, Occupation:
Agriculturist,

- 2) Sau. Sarlabai Ruprao Rongare, Age-50 years, Occupation : Agriculturist, Both are residents of Pethpura, Pathrot, Tahasil Achalpur, District : Amaravati

Mr.S. Y. Deopujari, Advocate for Appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 03.10.2025

JUDGMENT :

- 1) Heard.
- 2) Substantial questions of law were framed in the present appeal vide order dated 01.08.2022, which read as under:-

1) Whether Regular Civil Appeal No. 65/2010 is liable to be dismissed as abated?

2) Whether the Court can grant a larger relief than which is prayed for?

3) Whether the plaintiffs and defendant No. 2 i.e. the daughter of deceased Ramsingh are coparcener and co-owner of the suit field, particularly when Ramsingh died on 20.04.2005 i.e. prior to 09.09.2005 i.e. the day on which Section 6 of the Hindu Succession Act, 1956 was substituted by the Hindu Succession (amendment) Act, 2005 w.e.f. 9.9.2005?

- 3) Deceased appellant No.1 is original plaintiff No.1. Deceased appellant No.2 is son of deceased appellant No.1 and he

is original plaintiff No.2. Appellant Nos.(i), (ii), (iii) are the legal representatives of deceased Appellant No.2. Respondent No. 1 and 2 are the original defendant Nos. 1 and 2.

4) The dispute between the parties relates to an agricultural land admeasuring 3.86 H.R., which was owned by one Ramsingh Dabre. The plaintiff no. 1 is the widow and plaintiff no. 2 is the son of deceased Ramsingh. Defendant No. 2 is daughter of Ramsingh and defendant no. 1 is son of defendant no. 2.

5) The defendant no. 1 claims that deceased Ramsingh had executed will in his favour with respect to 1.21 H.R., land from and out of entire 3.86 H.R., land on 09.06.2004.

6) The plaintiffs filed a suit challenging the said will and further claiming relief of perpetual injunction, praying that their possession over the suit land should not be disturbed by the defendants without following due process of law.

7) The learned Trial Court held that the will dated 09.06.2004, stated to be executed by Ramsingh was illegal.

8) The present defendants/respondents preferred appeal challenging the judgment and decree passed by the learned Trial Court. The learned First Appellate Court held that the defendant no.1 had failed to prove that he had become the owner of the suit

property by virtue of the will dated 09.06.2004. However, the learned First Appellate Court was pleased to allow the appeal by passing a decree for partition and separate possession, holding that the plaintiff Nos.1 and 2 and defendant No. 2 had $\frac{1}{3}$ rd undivided share each in the entire land bearing Gut No. 10/2, admeasuring 3.86 H.R.

9) It will be pertinent to mention that while the appeal was pending, plaintiff no.1, who was respondent no.1 in the said appeal had expired on 17.01.2011. Likewise, plaintiff no.2, who was respondent no. 2 in the appeal, also expired on 04.12.2020.

10) Although the judgment passed by the learned First Appellate Court does not record so, the learned Advocate for the respondents does not dispute the fact that both the plaintiffs, who were respondents in the first appeal had expired while the appeal was pending. It is also not in dispute that the legal representatives of both the plaintiffs who were respondents in the first appeal were not brought on record.

11) The learned First Appellate Court has delivered judgment in the first appeal on 22.03.2022. It is thus apparent that the appeal was abated by operation of law long before the delivery of judgment in the said appeal. The judgment delivered in First

Appeal is, therefore a nullity.

12) The present Second Appeal is **allowed** by answering substantial question of law no. 1 in favour of the appellants and against respondents. The judgment and decree dated 22.03.2022, passed by the learned Ad-hoc District Judge-1, Achalpur in Regular Civil Appeal No. 65 of 2010 is quashed and set aside.

13) Since it is held that the appeal had abated before the judgment was delivered, it will not be appropriate to decide the other two substantial questions of law, which deal with merits of the matter.

14) It will be open for the respondents to take appropriate steps for setting aside abatement of the appeal, if they so desire, or to file afresh suit for partition and separate possession.

15) Needless to mention that in the event a fresh suit for partition and separate possession is filed, all defences will be open to be raised by the appellants who are legal representatives of original plaintiff No. 2.

(ROHIT W. JOSHI, J.)

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