IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 96 OF 2025

1. Ashok Pundlik Mendhule (Deceased)
Through Legal Representatives -

1(a) Shubhangi wd/o Ashok Mendhule
Aged about : 40 Years, Occu : Household;

1(b) Mithun s/o Ashok Mendhule
Aged about : 33 Years, Occu : Agricultural;

1(c) Krushna s/o Ashok Mendhule
Aged about : 32 Years, Occu : Agricultural;

All 1(a) to 1(c) are Residents at – Gumgaon,
Tahsil Hingna, District Nagpur.

2. Kashinath s/o Vishvanath Mendhule
Aged about : Major, Occu : Agricultural, R/o
Gumgaon, Tahsil Hingna, District Nagpur. ... APPELLANTS

V E R S U S

1. Madhukar s/o Sampatrao Sawarkar (Dead)
Through Legal Representatives -

(i) Chhabutai wd/o Madhukar Sawarkar
Aged about : Major, Occu ; Household;

(ii) Indrapal s/o Madhukar Sawarkar
Aged about : Major, Occu : Agricultural;

Both are Residents at – Ward No.3, Post – Moreshwar (Khapri), Tahsil Hingna, District Nagpur.

(iii) Anuradha w/o Yogesh Hatwar
Aged about : Major, Occu : Household;
R/o Post Bela, Tah.Umred, District Nagpur.

2. Chandabai wd/o Dinesh Sawarkar
Aged about : Major, Occu : Cultivation;

3. Akshay s/o Dinesh Sawarkar
Aged about : Major, Occu : Nil;

4. Amol s/o Dinesh Sawarkar
Aged about : Major, Occu : Nil;

Nos.2 to 4 are Residents of – Moreshwar (Khapri), Tahsil Hingna, District Nagpur. ... RESPONDENTS

Mr. R. D. Damle, Advocate for Appellants.

CORAM : ROHIT W. JOSHI, J.
DATE : APRIL 29, 2025.

ORAL ORDER

. This Appeal is filed by the original Defendant Nos.1 and 2. The Respondent Nos.1 to 4 are original Plaintiffs. However, Defendant No.3 Sou. Sandhya Subhashrao Shinde is not arrayed as Respondent in the Second Appeal. She is also not a party in the Regular Civil Appeal filed by the present Appellants.

2. The Respondent Nos.1 to 4 filed a suit for partition and separate

possession being Regular Civil Suit No. 249/2008 (Old Regular Civil Suit No. 292/2008).

3. It is the case of the Plaintiffs that the suit property was initially owned by one Vithoba Mendhule. After the demise of said Vithoba, the suit property, according to the Plaintiffs, was inherited by his widow Smt. Savitribai, sons Vishwanath and Pundlik, who are fathers of Defendant Nos.1 and 2 respectively and two daughters namely, Anjanabai and Anandabai. The Plaintiff No.1 is son of Anandabai, the daughter of Vithoba and Plaintiff Nos.2 to 4 are widow and sons of deceased Dinesh, who is also son of Anandabai. The Defendant No.3 – Sandhya is sister of Defendant No.1 Ashok.

4. It is the case of the Plaintiffs that Vithoba, the original owner of the property expired in the year 1976. He was survived by the above named legal representatives. The mother of the Plaintiff No.1 Anandabai i.e. daughter of Vithoba expired in the year 1999. Thereafter the Plaintiffs filed a suit for partition and separate possession in the year 2008. The learned trial court has decreed the suit granting 1/56th share to the Plaintiff No.1 and 1/56th share to the Plaintiff Nos.2 to 4 together in the suit property, *viz* – field Survey No. 32, admeasuring 3.14 HR occupancy Class-I, P. H. No. 48, Revenue Rs.15.75/-, situated at Mouza Gumgaon, Tahsil Hingna, District Nagpur.

5. The Defendant Nos.1 and 2 preferred an appeal being Regular Civil Appeal No. 939/2012, which came to be dismissed vide Judgment and Decree dated 19/10/2024. These concurrent decrees have been assailed by the Appellants, who are the original Defendant Nos.1 and 2 by filing the Second Appeal.

6. The only point that is urged in the present Second Appeal is that Anandabai, the mother of the Plaintiff No.1 and Dinesh, predecessor of the Plaintiff Nos.2 to 4 had expired in the year 1999 i.e. prior to 6/9/2005. It will be pertinent to mention that Section 6 of the Hindu Succession Act, 1956 *(for short, 'the Act of 1956')* came to be amended by the Hindu Succession (Amendment) Act, 2005 *(for short, 'the Act of 2005')*, which has come into force with effect from 6/9/2005.

7. The contention of the learned Counsel for Appellants is that a daughter was recognized as a coparcener and was conferred a right to seek partition in joint Hindu family property for the first time by virtue of the said amendment, which has come into force with effect from 6/9/2005. The contention is that since Anandabai died in the year 1999 i.e. prior to commencement of the Act of 2005, she or her legal representatives were not

entitled to file a suit for partition and separate possession as also to claim partition with respect to the suit property.

8. The contention raised by the learned Counsel is squarely misconceived. It is not in dispute that the property was initially owned by Vithoba, who has expired in the year 1976 i.e. after commencement of the Act of 1956. Vithoba was survived by two daughters and his widow, who are his Class-I legal representatives. Section 6 of the Act of 1956, as it stood prior to its amendment, provided that when a Hindu person dies leaving behind him Class-I legal representatives, his share in joint Hindu family property should be carved out by applying notional partition on the date of his demise and such share shall devolve upon his legal heirs by succession or inheritance and not by survivorship.

9. Perusal of the Judgments passed by the learned courts below indicate that the suit property was considered to be an ancestral property and share of deceased Vithoba was carved out in the said property by applying notional partition. The share, which was carved out, is then partitioned between his Class-I legal representatives. In that view of the matter, no fault can be found with the concurrent decrees passed by the learned courts below. The Appellants have failed to make out any substantial question of law in order

to entertain the Second Appeal. The Second Appeal is dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)

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Signed by: Mrs. V.G. Yadav
Designation: PA To Honourable Judge
Date: 03/05/2025 14:21:22