



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CIVIL APPLICATION NO. 429/2025 IN
MISC. CIVIL APPLICATION (REVIEW) ST.NO. 7010/2025 IN
SECOND APPEAL NO. 15/1997

(Deepak Diggambarappa Gondal [dead] thr. Lrs. Vs. Vatsalabai wd/o diggambarappa Gondal [dead]
thr. Lrs)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V.B. Gawali, Advocate for appellant/appellant.

CORAM: ROHIT W. JOSHI, J.

DATED : 28/04/2025.

Heard.

2. For the reasons mentioned in the application, the application for condonation of delay is allowed.

MISC. CIVIL APPLICATION (REVIEW) STNO.7010/2025

1. Heard.

2. The appellants/applicants in present review application are original plaintiffs who had filed a suit for partition and separate possession. The suit is partly decreed by granting share to the plaintiffs from and out of the share of the father which was carved out in the suit properties. The plaintiffs were not granted any independent share as coparceners which was their claim in the suit. The claim of the plaintiffs being entitled to share in the property as coparceners is rejected on the ground that they are children

of second wife of the father whose marriage was illegal in view of the provisions of Hindu Marriage Act, 1954. The appeal filed by the plaintiffs also came to be dismissed on same ground. In this backdrop, present second appeal is filed.

3. The second appeal was dismissed confirming the decrees passed by learned Courts. The original plaintiffs has filed present application for review placing reliance on judgment of Hon'ble Supreme Court in the matter of ***Revanasiddappa and another Vs. Mallikarjun and others, (2023) 10 SCC 1***. Perusal of the judgment of the Hon'ble Supreme Court will demonstrate that children begotten from the second wife are legitimate children and accordingly they are entitled to inherit property of their father in view of Section 16 of the Hindu Marriage Act. It is held that as regards ancestral property of the father, children begotten from an illegal marriage will be entitled to receive a share as legal heirs of the father, from and out of the share of the father after his demise. It is not in dispute that the plaintiffs have been granted share from the share of the father treating them to be legitimate children in view of Section 16 of the Hindu Marriage Act. The grievance of the plaintiffs is that they ought to have been granted independent share as coparceners in the suit property which is admittedly a Joint Hindu Family Property. The contention is liable to be rejected in view of the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for appellant/applicant.

4. The other contention raised by the learned counsel for appellant is that apart from the father, there were three sons, who are begotten from the first wife who were coparceners in the family. He contends that on demise of the father by virtue of notional partition, 1/4th share should have been carved out for the father and out of this 1/4th share, all the Class I legal heirs should have been granted a share in accordance with Section 8 of the Hindu Succession Act. It is undisputed that the first wife was alive on the date of demise of the father. It is well settled that although a wife cannot claim partition, on a partition, she is entitled to get a share equal to that of a coparcener-son. Therefore, apart from the father and three sons, one share is required to be carved out for the first wife. Accordingly, the share of the father will not be 1/4th, but 1/5th which is rightly computed. In that view of the matter, no case is made out for review of the judgment dated 10.12.2012 passed in Second Appeal No. 15/1997.

5. Review application is rejected.

6. In view of the rejection of review application, all pending civil applications are disposed of as infructuous.

(ROHIT W. JOSHI, J.)