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

53 SECOND APPEAL NO. 368 OF 2017

ZUMBERBAI RAKHMAJ ZAMBARE AND ORS
VERSUS
NANDABAI APPASAHEB PARKHALE AND ANR

...
Advocate for Appellants : Mr. Navin S. Shah.
Advocate for Respondent No.1 : Mr. S. L. Bhapkar.
...

WITH
CIVIL APPLICATION NO. 14483 OF 2016
IN SA/368/2017
...

CORAM : **SANJAY A. DESHMUKH, J.**
DATE : 26th October, 2026.

Per Court:

1 This Second Appeal has been preferred against the judgment and decree passed by learned District Judge-1, Beed, in Regular Civil Appeal No.125 of 2010, dated 24th July, 2015, which was preferred against the judgment and decree passed in Regular Civil Suit No.181 of 2004 by the learned Civil Judge, Junior Division, Ashti, District Beed, dated 28th July, 2010. The suit was filed for the possession of the suit property by the daughter against her mother, sisters, and the purchasers who purchased the suit property.

2 The defendant argued that Zumberbai acquired the

property of her husband in a partition suit filed against her father-in-law. Therefore, she became the absolute owner of it, as per Section 14(1) of the Hindu Succession Act, 1956, and therefore, the plaintiff, despite being the daughter, cannot claim partition of the suit property. The suit was decreed and the Regular Civil Appeal was dismissed, against which the present Second Appeal has been preferred.

3 On perusal of the pleadings, the evidence, the reasons and findings in the impugned judgment as well as the judgment of the learned Trial Court, and after hearing the learned Advocate for the appellants, this Court is of the view that the decree in the partition suit i.e. in Regular Civil Suit No.173 of 1997, was obtained by appellant No.1 / Zumberbai behind the back of the respondent No.1 / Nandabai.

4 Perused the grounds raised in this appeal, as well as the proposed substantial questions of law submitted by learned Advocate for the appellants. The learned Advocate for the appellants submitted that as per Section 14(1) of the Hindu Succession Act, 1956, when the Zumberbai acquired the suit property through the partition decree, it is her absolute, pre-existing right, and she is an absolute owner of it. Therefore, he contended that the daughter cannot file the suit for partition. The learned Advocate for the appellants also pointed out the proposed substantial questions of law from A to J.

5 On perusal of the reasons and findings of both the Courts, this Court is of the view that the decree obtained by appellant / Zumberbai in Regular Civil Suit No.173 of 1997 was obtained behind the back of respondent No.1 / Nandabai daughter. Her by-birth right or coparcenary right, cannot be extinguished by that decree. Therefore, the learned Trial Court as well as the Appellate Court rightly observed that the plaintiff has a legal right over the suit property. It is surprising to note that the suit property was sold to appellant Nos.4 and 5, who are the sons-in-law of Zumberbai. This shows that the said sale deeds are illegal and not binding upon the plaintiff, and it is not necessary for the plaintiff to file a suit for declaration or pray for a declaration that those sale deeds are not binding upon her.

6 The learned Trial Court and the Appellate Court rightly held that Zumberbai was not the absolute owner of the suit property under Section 14(1) of the Hindu Succession Act, 1956. Consequently, the suit was decreed for partition. Considering all these reasons, this Court is of the view that there is no substantial question of law.

7 As far as the sale deeds at Exhibits 78 and 79 are concerned, the learned Advocate for the appellants submitted that those sale deeds were signed by respondent No.1 / daughter, as a witness, and that she received a consideration of Rs.1,50,000/-. It is

pointed out from paragraph No.21 of the impugned judgment also. Thus, the learned Trial Court as well as the Appellate Court duly appreciated and reappreciated the evidence of the sale deeds. Merely because respondent No.1/plaintiff signed the sale deeds, it cannot be held that the sale transactions are binding upon her. It was because of the natural relationship between Zumberbai and the plaintiff, her daughter. These factual aspects were considered by the learned Trial Court and the Appellate Court in their concurrent findings on fact and law and therefore, the said factual aspects cannot be considered in the Second Appeal. This Court is of the view that there is no any substantial question of law to determine. The Second Appeal is, therefore, dismissed in limine.

8 Pending Civil Application is also disposed of.

[SANJAY A. DESHMUKH, J.]

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