



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

SECOND APPEAL NO.80 OF 2026

Shantinath K. Saitwal (dead) thru. LR's Sushilabai and ors.

Vs.

Maniklala R. Sontakke (dead) thru LR's Sulochana and ors.

*Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order*

Court's or Judge's Order

Mr. V. T. Suryawanshi, Advocate for appellants.

Mr. N. B. Kalwaghe, Advocate for respondent Nos.2 to 4 and 1B to 1D.

CORAM : ROHIT W. JOSHI, J.

DATE : 30.03.2026.

. The present appeal is preferred by the original defendant Nos.1 and 2 in Regular Civil Suit No.3 of 2003, which was filed by sons of late Ramakant Sontakke for partition and possession of suit property against the present appellants/defendant Nos.1 and 2 and other defendants.

2. It is not in dispute that Ramakant was original owner of the suit properties. In the year 1943, Ramakant, by executing a document, granted limited right of maintenance to one Bebibai, who was his cousin, being daughter of his father's sister. The defendant Nos.1 and 2 are children of Bebibai. The defendants opposed the suit contending that the property which was given for maintenance in the year 1943 became absolute property of their mother, Bebibai, after commencement of Hindu

Succession Act, 1956. The contention is based on Section 14(1) of the Hindu Succession Act.

3. The mother of defendant Nos.1 and 2 did not have any pre-existing right of maintenance against her cousin, Ramakant or even against properties of Ramakant. This right of maintenance was created for the first time under the document of the year 1943.

4. Under Section 14(1), a limited estate ripens into a full estate when the Hindu female has a pre-existing right over a property in question. However, when a limited estate is created for the first time under a document, without there being any pre-existing right over the property, Section 14(2) is applicable.

5. In view of the undisputed relationship between Ramkant and Bebibai, it cannot be said that Bebibai had any pre-existing right over properties of Ramakant.

6. The learned Courts are, therefore, rightly considered the controversy and had held that Section 14(2) will be applicable to the undisputed facts of the case.

7. It will also be pertinent to state that in the earlier round of litigation between Bebibai and the present plaintiffs, this issue has attained finality between the parties. The said judgment operates as *res judicata* between the plaintiffs and defendants, since defendants are claiming right over the suit property through their mother, Bebibai.

8. The concurrent decree for partition and possession passed in favour of sons of admitted owner, therefore, do not warrant any interference. Second Appeal is **dismissed**, with no order as to costs.

(ROHIT W. JOSHI, J.)

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