

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1631 OF 2012

Vishwanath S/o Kisanrao Khandagale,
Aged : 73 Years, Occ : Agril.,
R/o Adul (Bk.), Tq. Paithan,
Dist. Aurangabad, at present
residing at Plot No.44, Shriniketan
Sahakari Gruh Nirman Sanstha,
Behind Hotel Amarpreet,
Jalna Road, Aurangabad.

... APPELLANT

VERSUS

- 1] Sheshrao S/o Kisanrao Khandagale,
Aged : 77 Years, Occ : Agril.,
R/o Adul (Bk.), Tq. Paithan,
Dist. Aurangabad.
- 2] Tulshiram S/o. Kisanrao Khandagale,
Since deceased through his L.rs.
 - 1-A] Kadubai Wd/o Tulshiram Khandagale,
Aged : 63 Years, Occ. : Household,
R/o. Adul (Bk.), Tq. Paithan,
District : Aurangabad.
 - 2-B] Janardhan S/o Tulshiram Khandagale,
Aged : 42 Years, Occ. : Agril.,
R/o Adul (Bk.), Tq. Paithan,
District : Aurangabad.
 - 2-C] Sangita W/o Ramesh Mohite,
Aged : 38 Years, Occ. : Household,
R/o Devanagari Zambad Estate,
Dargah Road, Aurangabad.
- 3] Laxman S/o Kisanrao Khandagale,
Since deceased through L.rs.
 - 3-A] Prayagbai W/o Laxman Khandagale,
Since deceased through L.rs.

3-B] Vijay S/o Laxman Khandagale,
Aged : 31 Years, Occ : Agril.,
R/o Adul, Tq. Paithan,
Dist. Aurangabad.

3-C] Balu S/o Laxman Khandagale,
Aged : 26 Years, Occ : Agril.,
R/o Adul, Tq. Paithan,
Dist. Aurangabad.

4] Uddhav S/o Sheshrao Khandagale,
Aged : 43 Years, Occ : Agril.,
R/o Adul, Tq. Paithan,
Dist. Aurangabad.

... RESPONDENTS

Mr. Chandrakant V. Thombre, Advocate for Appellant.

Mr. R. K. Bhakade, Advocate for respondent no.4.

CORAM : N.W. SAMBRE,J.
DATE : 31st JULY, 2015.

ORAL JUDGMENT :

1] Heard.

2] The appeal is taken up for final hearing with the consent of parties.

3] The appellant herein is the original plaintiff in Special Civil Suit No. 435 of 2011, which was initiated before the Civil Judge Senior Division, Aurangabad, seeking a decree for partition and injunction. The suit came to be dismissed by judgment and decree dated 11th July, 2012, as such the present first appeal.

4] Learned counsel for the appellant. Shri Thombre would urge that the judgment delivered by the civil Judge Senior Division, is required to be upset in view of the fact that married sisters of the present appellants are not entitled for any share in the partition. The Court below as such has committed an error law and sought to set aside the judgment delivered by the trial court.

6] Learned counsel for the respondent Shri Bhakade, supported the judgment of the trial court. He submits that in view of the provisions of Section 29A of the Hindu Succession Act, the learned trial court has rightly dismissed the suit. According to him, even the said issue is no more res-integra in view of the judgment of the Full Bench of this Court in the matter of "*Badrinarayan Shankar Bhandari Vs. Omprakash Shankar Bhandari*" reported in 2014(5) Mh.L.J. 434.

7] Having considered the rival contentions of the parties, it is required to be noted here that the present appellants and respondents are having common ancestor by name Kisanrao, who died on 10th August, 1997. During his lifetime, he has carried out the partition amongst his sons, namely, plaintiff and defendant Nos. 1 and 2. The defendant Nos. 3A to 3C are sons of Laxman, deceased son of Kisanrao. So far as defendant No.4 is concerned, he is son of defendant No.1. It is not in dispute that late Kisan had 4 daughters, namely, Tarabai, Chandrabhagabai, Narmada and Parvati, who were married prior to 1996. The rights of such married daughters are

governed by the provisions of Section 29A of the Hindu Succession Act, 1956.

Pursuant to the above referred provision, the sisters ought to have been added as parties to the suit and their share should have been carved out separately.

8] Taking the shelter of the above referred provision of Section 29A of the Hindu Succession Act, the trial court proceeded to dismiss the suit for non-joinder of necessary parties.

9] In view of the above factual position, that the sisters of the plaintiff and defendants 1 and 2, namely, Tarabai, Chandrabhagabai, Narmada and Parvati, were not added as party to the suit for partition, in my opinion, the trial court has rightly dismissed the suit. I am fortified in my view in the light of the judgment of the Full Bench in the matter of “Badrinarayan Bhandari Vs. Omprakash Bhandari” (Supra). As such, the present appeal lacks merit. Hence, the same is dismissed.

[N.W. SAMBRE]
JUDGE.

grt/-