

MHLA040002852022



Presented on : 18.10.2022

Registered on : 18.10.2022

Decided on : 11.12.2024

Duration : 02 Y 01 M 23 D.

IN THE COURT OF DISTRICT JUDGE, AT
AHMEDPUR.

(Presided over by S.U.Wadgaonkar)
(CNR No.MHLA040002852022)

Reg. Civil Appeal No.25/2022

Exhibit No.24

Namdev Manchakrao Poul

Age : 47 Yrs. Occ. Agri.

Resident of Khandali, Tq. Ahmedpur

District Latur

.....Appellant

Versus

1) Pandurang Manchakrao Poul,
Age 44 Years, Occ. Agri.

2) Sumanbai w/o Manchakrao Poul,
Age 75 Years, Occ. Agri.

Both R/o.Khandali, Tq. Ahmedpur,
District Latur

3) Parwatibai w/o Shankarrao Pawar
Age : 49 Yrs. Occ. Household,
R/o.Loha, District Nanded

.....Respondents

Claim - Appeal U/Sec.96 of the Civil Procedure Code.

Shri.D.L.Ghogare, Advocate for the appellant.

Shri.R.S.Kendre, Advocate for respondent No.1.

Shri.V B. Musane, Advocate for respondent No.2.

Shri.S. G. Jadhav, Advocate for respondent No.3.

J U D G M E N T

(Delivered on 11.12.2024)

Present appeal is preferred by defendant No.1 Namdeo against decree of counter claim preferred by defendant No.3 for the relief of partition and separate possession by way of judgment and decree dated 07.09.2022 in Regular Civil Suit No.371/2016, passed by learned 3rd Joint Civil Judge, Junior Division, Ahmedpur.

2) Appellant is a defendant No.1, respondent No.1 Pandurang is the plaintiff, respondent No.2 Sumanbai is the defendant No.2, respondent No.3 is the defendant No.3 Parvatibai before the trial court. Their rank and status will be referred as assigned before trial court.

3) Plaintiff has claimed the relief of declaration of title and perpetual injunction in regard to land Gat No.808 adm to the extent of 01 H 41 R with 1/4th share in the well located at Khandali. (Here-in-after referred as 'suit land'). Counter-claimant defendant No.3 claimed relief for partition and separate possession in regard land Gat No.808 adm. 03 H 82 R located at Khandali be a joint family property. (Here-in-after referred as 'disputed property').

4) It is admitted fact that plaintiff, defendant No.1, are the sons of deceased Manchakrao, defendant No.2 Sumanbai is the wife of Manchakrao. Defendant No.3 is the daughter of Manchakrao. Initially the nature of property land Gat No.808 is joint family property. Manchakrao was

died in the year 1992 leaving behind plaintiff and defendant No.1 to 3.

Brief facts of the case are as under :

5) According to the plaintiff, land Gat No.808 adm. 03 H 82 R was the joint family property. Partition is effected at the time of Gudi Padva 2015 wherein he got agricultural land as his share towards the northern side of land Gat No.808 i.e. suit land and 1/4th share in the well. The defendant No.1 Namdev got half share in land Gat No.808 towards southern side along with 1/4th share in the well. The defendant No.2 Sumanbai got 01 H land from land Gat No.808. The defendant No.3 surrendered her right in partition. Defendant denied his title and caused obstruction in his possession. Hence, claimed for the relief of declaration of title and perpetual injunction. He failed to place written statement to the counter claim placed by defendant No.3.

6) The defendant No.1 resisted the suit as well as counter claim of defendant No.3. According to him, during the lifetime of Manchakrao 82 R land was allotted to defendant No.3 as her share. Manchakrao alienated the share of defendant No.3 to the extent of 82 R land by way of registered sale-deed dated 13.02.1992. After the marriage of defendant No.3 partition took place in between plaintiff, defendant No.1 and 2 in the year 2000. The plaintiff and defendant No.1 have got half share in land Gat

No.808. The defendant No.2 has surrendered her share in their favour. Suit is barred by law of limitation. In regard to the counter claim he denied the share of defendant No.3 in the joint family property. Hence, claimed for dismissal of it.

7) Defendant No.2 placed written statement to the suit as well as counter claim. According to her, after demise of Manchakrao the joint family property is mutated in the name of defendant No.1 Namdeo. She denied the theory of alleged partition. According to her, no partition is effected. She has not surrendered her right. Hence, claimed for dismissal of suit.

8) Defendant No.3 placed written statement to the suit as well as filed counter claim for the relief of partition and separate possession in regard to the disputed property. She denied the allotment of share in her favour to the extent of 82 R land in the life time of Manchakrao and alienation of it. She denied the factum of effect of partition. She claimed that the disputed property is the joint family property of them. She is having share in it. Hence, she claimed relief of partition and separate possession by way of counter claim.

9) Learned Trial Court after assessing the evidence on record, discarded the case of the plaintiff and accepted the counter-claim of defendant No.3 and allowed the relief of partition and separate possession. Being aggrieved by it, defendant No.1 preferred present appeal.

10) Heard argument advanced on behalf of the defendant No.1 by Adv. Shri D.L.Ghogare and Adv. Shri.R. S.Kendre for plaintiff and Shri.S.G.Jadhav for defendant No.3 and Adv.V. B. Musane for defendant No.3.

11) It is clarified that the regular civil suit which is came to be filed by Pandurang is dismissed. Pandurang has not filed regular appeal or cross appeal. So there is no need to refer cause and relief claimed in the suit. Question remains for the consideration of counter claim.

12) Points for determination with findings thereon are as follows:-

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether counter claimant defendant No.3 : proves that disputed property is a joint family property ?	Yes
2)	Whether trial court committed error while : allowing the relief of partition and separate possession by way of counter claim ?	No
3)	Whether impugned judgment and decree is : erroneous and needs any interference?	No
4)	What order ?	: As per final order.

REASONS

Point No.1 to 3 :-

13) Plaintiff Pandurang led evidence of himself (Exh.52), defendant No.1 Namdeo placed evidence of himself (Exh.60) and Vijaykumar Shelke (Exh.69). The

evidence led on behalf of defendant No.1 demonstrate that deceased Manchakrao allotted share to the extent of 82 R to the defendant No.3 in the year 1992 by way of partition. The said share was alienated by Manchakrao for the marriage expenses of defendant No.3 Parvatibai in favour of Sambhaji More in the year 1992. Partition effected in between plaintiff, defendant No.1 and 2, wherein half share each is allotted to plaintiff and defendant No.1 in disputed property. Plaintiff led evidence claiming that partition is effected in the year 2015, wherein he got suit land in his share, but defendants caused obstruction in his possession. Defendant No.3 led evidence of herself. She testified that no partition is effected in the year 1992 and thereby allotment of share of 82 R land in her favour. She denied the alienation of her share for the expenses of her marriage in the year 1992. The disputed property is a joint family property and she is having 1/4th share in it. Learned advocate for the defendant No.1/appellant as well as defendant No.2 and 3 placed written argument. The sum and substance of the written argument is similar to the pleading and evidence led by the respective parties. So there is no necessity to reproduce its verbatim.

14) According to the submissions and evidence setforth by defendant No.1 it demonstrates that partial partition is effected thereby and 82 R land is allotted to the share of defendant No.3. Manchakrao sold it to Sambhaji More by way of registered sale-deed. So defendant No.3 has

no share in the joint family property. In this context, at the first place in the year 1992 the defendant No.3 being the daughter at the relevant time was not coparcener of the joint family property so no question arose to effect partial partition in regard to defendant No.3 herself keeping other members to be joint. So this factum itself is unreliable. Further, partial partition is permissible between the coparcener in respect of person making it. But when a joint family property is divided and specific portion is allotted to a specific coparcener keeping joint property among other coparcener, there should be sufficient evidence in that regard. Except general statement no documentary evidence is forthcoming in regard to the partial partition that too allotment of share of 82 R land by effecting revenue entries in favour of defendant No.3. Even if we assume that 82 R land is allotted to the share of defendant No.3 then Manchakrao is not eligible to alienate it. This circumstances indicates the theory putforth by defendant No.1 of partial partition is not reliable and believable. Further, the cross-examination of defendant No.1 indicates after the death of Manchakrao the statuse of disputed property is a joint property. Thus, theory putforth by defendant No.1 that in the year 1992 share is allotted to defendant No.3 is goes away.

15) Another submission advanced on behalf of defendant No.1 that the marriage of defendant No.3 is performed in the year 1992. In that regard defendant No.1

placed evidence in regard to the performance of marriage by way of marriage invitation card. There is a reference of alienation for the cause of marriage of defendant No.3 in the sale-deed (Exh.70) executed by Manchakrao in favour of Sambhaji More. After going through the sale-deed it transpired that the sale-deed was executed for three causes i.e. the education of children, development of other land and marriage of defendant No.3. This factum itself indicates that Manchakrao has not sold the subject matter of sale for the sole purpose of marriage of defendant No.3 only. Even he sold the said land for marriage then it is a responsibility of joint family property to perform her marriage. It does not mean that marriage of daughter is performed by the Manager of the family by making alienation of joint family property then to infer it pertains to the share of said daughter.

16) The plaintiff came with a case that partition effected in the year 2015. The defendant No.1 came with the case that partition is effected in the year 2000. To prove the partition there should be some positive evidence, same should be reflected by way of revenue entries. But no revenue record indicates effectation of partition and separate possession of joint family property. The status of disputed properties by way of 7/12 extract indicates that the whole joint family property is recorded in the name of defendant No.1. There is no dispute that after the death of Manchakrao it is recorded in the name of defendant No.1.

Still it is existed as it is. So nature of suit property is joint family property. The defendant No.3 being the daughter became the coparcener pursuant to the amendment to Section 6 of Hindu Succession Amendment Act, 2005. Accordingly, the plaintiff and defendant No.1 and 3 are the coparceners of joint family property. Defendant No.2 being the mother is entitled for equal share similar to the son in the event of partition. So when we carved the share of parties then the plaintiff and defendant No.1 to 3 will get 1/4th share each in the disputed property being a joint family property.

17) In the light of above discussion, I conclude that the judgment and decree under appeal does not call any interference. In the result, the appeal is devoid of merit is liable for dismissal. Appeal is liable to be dismissed. Hence following order :

ORDER

The appeal stands dismissed.

Date: 11.12.2024.

(S. U. Wadgaonkar)
District Judge-1,Ahmedpur.
