



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.378/2018

1. Smt. Ranjana w/o Chindhuji Mahajan
Aged about 52 years Occ. Housewife,
R/o Purpidit Qr. No.88 Sant Chokhoba
Ward, Hinganghat District Wardha
2. Jyoti w/o Nagraj Vaidya,
Aged about 48 years, Occ. Housewife,
R/o Maroti Ward No.2 Hinganghat
District Wardha.

... **APPELLANTS**

..VERSUS..

1. Shri Arun s/o Manikrao Hande
Aged about major, Occu. Agriculturist
R/o Dudha Post Borkhedi
Tq. And District Nagpur.
2. Shri Subhash s/o Manikrao Hande
Aged about major, Occu. Agriculturist
R/o Prasad colony in front of Thakre's
House Butibori District Nagpur.
3. Shri Sharad s/o Manikrao Hande
Aged about major, Occu. Agriculturist
R/o Smt. Tikdoji Ward Behind Gas
Godown, Near house of Sunil Nikhade
Hinganghat District Wardha.
4. Shalu wd/o Deepak Hande
Age major, occu Agriculturist
5. Prajwal s/o Deepak Hande,
Aged about major, Occu. Nil

6. Vedika d/o Deepak Hande
Aged about minor, Occu. Nil
Respondent Nos.5 & 6 being minor
Through their Natural Guardian Mother
Shalu wd/o Deepak Hande
Respondent Nos.4 to 6 all r/o Sant
Tukdoji Ward, Behind Gas Godown, Near
house of Sunil Nikhade, Hinganghat,
District Wardha
7. Smt. Vanita @ Venu wd/o Vishnu Hande
Aged about major, Occu. Not known
8. Vishal s/o Vishnu Hande
Aged about 19 years, Occu. Not known
9. Ku. Vaishnavi d/o Vishnu Hande
Aged about 18 years, occu. Not known
Respondent Nos.7 to 9 r/o Master colony
Chafale layout, Mount Carnel Road,
Tah. Samudrapur, District Wardha.
10. Smt. Kamlabai wd/o Manikrao Hande
Age about- Major, Occ- Housewife
R/o C/o Shri Sharad s/o Manikrao Hande
R/o Sant Tukdoji Ward, Nandori Road,
Sai Nagar, In front of Hanuman Mandir,
Hinganghat, District Wardha
**(Amendment as per Court's
order dated 18/02/2021)**
11. Bank of Maharashtra,
Through its Branch Manager
Butibori Branch Butibori,
District Nagpur.

...**RESPONDENTS**

Shri R.S. Charpe, Advocate for the appellants
Shri M.V. Amale, Advocate for the respondent Nos.4 to 6

CORAM : SMT. M.S. JAWALKAR, J.
DATE OF RESERVING THE JUDGMENT : 20/06/2023
DATE OF PRONOUNCING THE JUDGMENT : 17/07/2023

JUDGMENT

Heard learned Counsel for both the parties.

2. The present appeal is filed being aggrieved by the judgment and decree dated 14/11/2017 passed by the 11th Joint Civil Judge Senior Division Nagpur in Special Civil Suit No. 166/2014 dismissing the suit of the appellants/plaintiffs.

3. The facts of the present case is as under:

Plaintiffs are daughters of the defendant No.1 and 9. Defendant Nos.2 to 5 and late Vishnu are brothers of plaintiffs. Defendant Nos.6 to 8 are heirs of late Vishnu, defendant No.10 is Bank, where amount of compensation is deposited by other defendants. It is contended that Bajirao Hande, father of defendant No.1 was possessing ancestral property bearing Survey No.20 (Old No.2/2) are 5.80 H.R., Survey No.10(Old No.15/1) area 1/70 H.R. Survey No.11 (Old No.15/2) are 1.70 H.R., Survey No.12(Old No.15/3) area 1.70 H.R., Survey No.13 (Old No.15/4) area 1.62 H.R. Survey No.14 (Old No.15/5) area 1.70 H.R. situated at mouza

Dudha Mandal Bori, Nagpur Gramin District Nagpur. Said property is hereinafter called as 'suit property'. Suit property is ancestral property of plaintiffs and defendants No.1 to 9. Being ancestral property plaintiffs are having their share in it.

4. It is further contended that suit property was acquired by State Government for MIDC Nagpur. As per award dated 03/03/2012 passed by the Deputy Collector, Land Acquisition Officer in LAC No.9/A-65/2007-2008, compensation amount was paid to defendant Nos.1 to 8. After passing of award and disbursement of amount, plaintiffs came to know that suit property is acquired by State Government and compensation amount is also paid. After inquiry, plaintiffs also came to know that defendants Nos.1 to 9 misguided revenue authority and fraudulently recorded their names to revenue record of suit property. In fact plaintiffs are co-owners of suit property and have equal share in it. Defendant Nos.1 to 9 fraudulently shown that the partition was effected and they mutated their names. Even separate survey numbers were given to suit property.

5. It is further contended that registered partition is not effected between all legal heirs. So, the partition is not binding on plaintiffs. Entries in 7/12 extract are also manipulated and are effected by misleading revenue authority. Those entries are taken behind back of plaintiffs. Defendants have no right in suit property and that too without giving any share to plaintiffs.

6. Defendant appeared and filed a written statement and submitted that the property belonging to defendant No.1 was partitioned by metes and bounds in the year 1981. As per partition effected in the year 1981, mutation entry was effected. Plaintiffs are married sisters of defendant Nos.1 to 9. At the time of marriages, their shares were given to them. Plaintiffs never raised any objection to said partition. Plaintiffs are knowing that partition is effected in the year 1981.

7. The learned Lower court after considering the evidence before it held that the oral partition was acted upon by the parties and therefore the daughter can not claim her right contending that property still remains co-parcenary property. In such circumstances,

plaintiffs had no share in suit property and also have no right to claim share in compensation amount received after acquisition of suit property and dismissed the suit with cost. The aforesaid judgment is the subject matter of challenge in the present Appeal.

8. The contention of the learned counsel for the appellants is that the learned Trial Court has wrongly recorded the pleadings of the respondents that oral partition was took place between the plaintiffs/appellants and brothers and fathers of the appellants in the year 1981 and the suit properties was partitioned by metes and bounds. The learned Trial Court ought to have seen that it was never pleaded by the respondents that the oral partition was taken place between appellants/plaintiffs and the defendants/respondents.

9. It is further contention that the learned Trial Court failed to note that it was not the case of the respondents that any share was given to the appellants in the so called partition to exclude the share of the appellants in an ancestral property which were accrued to them by virtue of the amendment provision of

Hindu Succession Act amended by the Central Government in 2005.

10. The learned Counsel for appellants relied on *Vineeta Sharma Vs. Rakesh Sharma and others reported in 2020 AIR (SC) 3717*.

11. The learned counsel for the Respondent supported the Judgment passed by the lower court and contended that the partition was effected in the year 1981 and the shares of the Appellants were given to them at the time of their marriage, this fact was rightly appreciated by the learned lower court and passed an appropriate order which need no interference.

12. I have heard both the parties at length. Perused judgment and record. There is no dispute about relationship and property being ancestral one. It is the case of defendant that there was an oral partition. However, nobody is examined by the defendants in support thereof. The learned Civil Judge Senior Division, Nagpur in his judgment recorded finding that the plaintiffs failed to prove that they are having 1/8th share each in the land

acquired and in turn share in compensation amount towards land acquired.

13. I have gone through the evidence of plaintiff No.1 as well as plaintiff No.2. Plaintiff No.1 deposed as per pleadings in the plaint. It appears that she is not educated lady, though she has admitted that there was no name of plaintiff in mutation entries that is not sufficient to conclude that they were having knowledge of mutation entries and its time of entries. She has admitted that in Exhibits 49 to 53, there is mention of partition in the year 1981 that also does not sufficient to conclude that she was having knowledge about partition. She has specifically deposed that she is not aware that her father partitioned the property before her marriage in which she is claiming share. She further deposed that their names were not reflecting in record as her father partitioned the property in his lifetime. In my considered opinion, the learned Civil Judge Senior Division totally erred in holding that she has admitted partition. The reason for not reflecting their names in record, she has admitted but she has not admitted that they were having knowledge of any partition. The plaintiff No.2 clearly denied fact of

oral partition. In view thereof, the learned Civil Judge Senior Division, Nagpur ought to have held that being ancestral property, the daughters are also having shares. If Section 6(5) of the Hindu Succession Act, 1956 is seen which reads as under:

“Section 6. Devolution of interest in coparcenary property.- (1)

(2)

(3)

(4)

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation:- For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by the decree of a Court.”

Admittedly, there was no registered partition and as such, the property is required to be treated as joint property.

14. The learned Civil Judge Senior Division, Nagpur without there being any evidence on record to hold that there was no amount lying in the account of father of plaintiffs. In fact, even it is presumed that there was partitioned still the plaintiffs are having share in their father's share denied the share in the share of father. This aspect is totally ignored by learned Civil Judge Senior Division,

Nagpur and dismissed the plaint.

15. The learned Counsel for appellant relied on ***Vineeta Sharma (supra)*** wherein referenced is answered as under:

“129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary

decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

16. As such, the plaintiffs are having share in the ancestral property in turn in the compensation awarded by the State Government for Maharashtra Industrial Development Corporation (MIDC). As such, the order passed by learned Civil Judge Senior Division, Nagpur is liable to be set aside. Accordingly, I proceed to pass the following order:

ORDER

- i) The Appeal is allowed
- ii) It is hereby declared that appellants are having 1/ 8th share

each in the land acquired by the State Government for Maharashtra Industrial Development Corporation (MIDC) and in turn having share in the compensation so awarded the suit land acquired. If amount of compensation is already disbursed, defendants/respondent Nos.1 to 10 are liable to redeposit the amount towards share of plaintiffs/appellants in the Court within a period of two months, failure to which the amount shall carry interest at the rate of 7.5% per annum.

The First Appeal stands disposed of accordingly.

Suit is decreed and decree be drawn up accordingly.

(Smt. M.S. Jawalkar, J.)

R.S. Sahare