A GITABAI MARUTI RAUT (DEAD)
THROUGH LR. & ORS.

v.

PANDURANG MARUTI RAUT (DEAD)
THROUGH LRS. & ORS.

B

(Civil Appeal No. 7702 of 2013)

AUGUST 11, 2022

[HEMANT GUPTA AND VIKRAM NATH, JJ.]

C *Suit – For partition – Joint Family ancestral property – A suit for partition in the Joint Family Property was filed by plaintiff for the properties situated in two villages-1 and 2 – 'B' was the common ancestor and left behind four sons, 'N', 'R', 'M' and 'S' – 'M' is predecessor of the parties in dispute and his share in ancestral property is in dispute – 'M' married twice – First wife died in the*
D *year 1948 leaving behind defendant no.1,2,3,4 – Second wife and the original plaintiff, died during the course of proceeding leaving behind her legal representatives (two sons and three daughters), who are prosecuting the present case – In respect of property at village-1, the High Court affirmed the finding that defendant no.1*
E *had purchased the said property after death of 'M' – In respect of property at village-2, the High Court held that in absence of any evidence that the property in the hand of 'R' was ancestral property, the plaintiff did not have share in the said property – Held: No pleadings were raised regarding the property at village-1 that it is being purchased from the income of the joint family property,*
F *therefore is not joint ancestral property – All three Courts have concurrently held that the property at village-1 was not ancestral property – With respect to Property at village-2 the evidence on record including written memorandum of settlement (Ex.111) and the mutation of the same (Ex.104) together with the evidence of*
G *PW1 and PW2 suggest that the said property is Joint family property – No evidence that 'R' was the sole owner or that he acquired the disputed property from his income – There is no evidence to suggest that the disputed property was gifted to defendant no.1 by 'R' – Therefore, the plaintiff and defendants have equal share in the property at village-2.*

H

Allowing the appeal, the Court

HELD:1. In respect of a property at village-1, the High Court affirmed the finding that defendant No. 1, purchased the property at village-1 vide sale deed dated 25.2.1969 after the death of 'M'. It was also held that the appellant neither pleaded nor proved that there is sufficient nucleus of the income from the joint family from which the property at village-1 could be purchased. This Court does not find any pleadings regarding the property at village-1 as purchased from the income of the joint family property. All three Courts have concurrently held that the property at village-1 is not a joint ancestral property. This Court found no reason to interfere with the findings relating to the property situate in Village-1. [Para 4][1071-E-G]

2. The High Court has misread the most important evidence led by the appellants i.e., one of the brothers, 'S'(PW-2), who had deposed that the land at village-2 was ancestral land. The Mutation No. 1274 itself shows that the land was partitioned amongst the brothers. It was not a gift by 'R' in favor of defendant no.1, as found by the High Court. The name of defendant no.1 in respect of share of 'M' came after the death of 'M' in the year 1966 being the eldest male member as Karta of the joint family of 'M'. Defendant no.1 held the property as Karta of the joint family property fallen to the share of 'M' in terms of the settlement arrived on 23.12.1961 (Ex.111). The settlement (Ex.111) is with 'M' and not defendant no.1 as he was alive on that day. Since, when the revenue entry was being recorded in 1970, after 'M' had died, defendant no.1 represented the estate of 'M' as Karta. In view of the said fact, the findings recorded by the High Court are not tenable. [Para 12][1074-A-C]

3. Since the evidence on record including written memorandum of settlement dated 23.12.1961 (Ex.111) and the mutation (Ex.104) show that village-2 was a joint family property, therefore, the expression 'partition' has been used. There is no evidence that the property at Village-2 was gifted to defendant no.1 by 'R', the eldest son of 'B'. There is no evidence that 'R' was the sole owner or that he acquired the property from his

income. The categorical statement of PW-1, the plaintiff is that her father-in-law was the owner of the property at village-2. Even PW-2 has also deposed to the same effect. He was examined as the surviving son of 'B'. In the absence of any evidence that 'R' had the capacity to purchase the property as the documentary evidence in respect of partition of the property situated at Village-2, the findings recorded by the High Court cannot be sustained. The plaintiff and defendants including daughters of 'M' have equal share in the village-2 property. [Paras 14 and 15][1075-A-B]

Vineeta Sharma v. Rakesh Sharma & Ors. **(2020) 9 SCC 1 : [2020] 10 SCR 135;** *Mallappa Girimallappa Betgeri & Ors. v. R. Yellappagouda Patil & Ors*. **AIR 1959 SC 906;** *Surendra Kumar v. Phoolchand (D) through LRs. & Anr.* **(1996) 2 SCC 491 : [1996] 2 SCR 15;** *Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade & Ors.* **(2007) 1 SCC 521 : 2006 (11) SCALE 184 – referred to.**

Case Law Reference

[1996] 2 SCR 15	**referred to**	**Para 8**
[2020] 10 SCR 135	**referred to**	**Para 15**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7702 of 2013.

From the Judgment and Order dated 01.10.2008 of the High Court of Judicature at Bombay in Second Appeal No.167 of 2007.

Sudhanshu S. Choudhari, B. G. Parab, R. A. Sonawane, Mahesh P. Shinde, Ms. Rucha A. Pande, Dilip Annasaheb Taur, Narayan Babanrao Dhokale, Advs. for the Appellants.

P. S. Patwalia, Pallav Sisodia, Siddharth Bhatnagar, Sr. Advs., Nirnimesh Dube, Ms. Ritika Khanna, Arvind S. Avhad, Krishankant Todkar, Bhausahed Gadade, Ms. Pracheta Kar, Aditya Sidhra, Nadeem Afroz, Sonal Anand, Anant Agarwal, Samarth Agarwal, Ms. Sweta Rani, Advs. for the Respondents.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. The plaintiff filed the present appeal against the judgment dated 01.10.2008 passed by the High Court of Judicature at Bombay dismissing the second appeal filed by her. However, the plaintiff died on 18.12.2014 during the pendency of the appeal. Now, the legal representatives of the deceased are prosecuting the present appeal.

2. The question for consideration herein is whether the properties at villages Pirangut and Nande are joint family ancestral properties in the hands of Maruti, the deceased son of Balaji, predecessor of the parties in appeal. The admitted family tree shows that Balaji was the common ancestor. He left behind his four sons, Narayan, Raghunath, Maruti and Sopan. Maruti died on 13.7.1966. He married twice, both his wives had a similar name, Geetabai. The first wife, Geetabai, died in the year 1948 leaving behind the defendant Nos. 1, 2, 3 and 4, namely, Pandurang, Krishnakant, Ramchandra and Muktabai. Geetabai, his second wife and the original plaintiff, filed a suit for partition. She died during the pendency of the proceedings leaving behind two sons and three daughters, namely, Chandrakant, Ramesh, Uma, Shailaja and Sumitra.

3. There is no dispute in respect of the property situated at Lavale, which has been held to be a joint family property wherein a finding has been returned that the plaintiff would have a share in the estate.

4. In respect of a property at Nande, the High Court affirmed the finding that Pandurang/defendant No. 1, purchased the property at village Nande vide sale deed dated 25.2.1969 after the death of Maruti. It was also held that the appellant neither pleaded nor proved that there is sufficient nucleus of the income from the joint family from which the property at village Nande could be purchased. In the absence of any proof, the claim of appellant for such property situated at Village Nande was negated. Our attention was drawn to the plaint filed by the deceased Geetabai but we do not find any pleadings regarding the property at Nande as purchased from the income of the joint family property. All three Courts have concurrently held that the property at Nande is not a joint ancestral property. We find no reason to interfere with the findings relating to the property situate in Village Nande.

5. Hence, the only question which survives for consideration is whether the property situated at village Pirangut is an ancestral property, in which the appellants had share.

A 6. The plaintiff has pleaded that land at Pirangut was purchased by Hindu Undivided Family (HUF). The plaintiff and deceased Maruti looked after and brought up defendant Nos. 1 to 4. The plaintiff along with all defendants were living jointly and after the death of Maruti, the joint family continued even thereafter, as the Defendant No. 1 assumed the position of Karta of Maruti's family. It is pleaded that there was a B partition of the properties during Maruti's life time. The memo was reduced in writing and signed by all the four sons of Balaji in the year 1961, but the mutation on the basis of family settlement was sought in the year 1970, only after the death of Maruti.

C 7. In respect of the property at Pirangut, the High Court returned the following findings:

> "9. This takes me to consider the claim of the Appellant in the property at Pirangut. The property at Pirangut was admittedly purchased by Raghunath, uncle of Defendant no. 1 from one Kanhu Dhondu Kudale on 19th August 1947. According to the D appellant by Mutation entry 1274 this property was partitioned, and the land at Pirangut was given to Defendant no. 1. If that be so the Appellant obviously has share in it. Per contra it is the case of the defendant no. 1 that this property was purchased by Raghunath in 1947, which was latter on gifted in favour of E Defendant no. 1. In order to claim share in the property at Pirangut it was for the appellant/plaintiff to plead and prove that property at Pirangut was ancestral property. Then and then only appellant/ Plaintiff would have share in it. In the absence of any evidence that the property in the hand of Raghunath was ancestral property, in my considered view, the appellant/plaintiff could not have relied F upon the Mutation entry no. 1274 to claim share in the suit property."

8. Mr. Sudhanshu S. Choudhari, learned counsel for the appellants referred to judgments reported as ***Mallappa Girimallappa Betgeri & Ors.*** v. ***R. Yellappagouda Patil & Ors.***[1], ***Surendra Kumar*** v. G ***Phoolchand (D) through LRs. & Anr.***[2] and ***Appasaheb Peerappa Chamdgade*** v. ***Devendra Peerappa Chamdgade & Ors.***[3] to contend that the property purchased by Raghunath was the property from the

[1] AIR 1959 SC 906
[2] (1996) 2 SCC 491
H [3] (2007) 1 SCC 521

income of the ancestral property and, therefore, in the said property, the appellants cannot be deprived of their share. The appellants also referred to the statement of Sopan, brother of Raghunath, who had appeared as PW-2. Sopan had deposed that the ancestral property is situated at Lavale and Pirangut and that the property at Pirangut was entered in the name of the elder brother Raghunath. The partition took place between the brothers and a memorandum (Ex 111) was prepared to this effect.

9. The memorandum dated 23.12.1961- Ex-111 has been produced by the appellants before this Court. The said memorandum shows different parts of the land situated in village Pirangut falling to the share of Narayan, Raghunath, Maruti and Sopan. Apart from the share in the land, even the other activities were arranged for and memorandum was prepared. In the cross-examination, Sopan admitted that there was no joint family at Nande but the partition had taken place between the brothers of the property situated at Lavale and Pirangut. He stated that the property situated at Pirangut was standing in the name of his brother Raghunath.

10. The plaintiff Geetabai appeared as PW-1. She deposed that landed property at Pirangut was inherited by them from her father-in-law, Balaji. She has also referred to the memorandum of settlement recorded on 23.12.1961 and that it bears the signature of Raghunath and Sopan (PW-2) and thumb impression of Narayan. In the cross-examination, she stated that the land in the name of her father-in-law was situated at Village Lavale and Pirangut. She further deposed that landed property situated at Pirangut as well as the property at Nande were purchased by her husband. She denied that the property situated at Pirangut was purchased by Raghunath. She also denied the suggestion that property at Village Lavale alone was joint family property.

11. The memorandum of partition was entered on 23.12.1961 when Maruti was alive, but the same was sought to be given effect in the revenue record vide Ex.104, Mutation No. 1274 on 28.6.1970. Such revenue record is in respect of land situated at village Pirangut, wherein, namely, Narayan, Raghunath and Sopan, sons of Balaji and Pandurang Maruti son of fourth brother Maruti, have been allotted separate share of land in the land situated at Village Pirangut. Pandurang had been given share as by that time Maruti had died. Therefore, Pandurang got the property by partition amongst four brothers alone.

12. The High Court has misread the most important evidence led by the appellants i.e., one of the brothers, Sopan (PW-2), who had deposed that the land at village Pirangut was ancestral land. The Mutation No. 1274 itself shows that the land was partitioned amongst the brothers. It was not a gift by Raghunath in favor of Pandurang/defendant no.1, as found by the High Court. The name of Pandurang in respect of share of Maruti came after the death of Maruti in the year 1966 being the eldest male member as Karta of the joint family of Maruti. Pandurang held the property as Karta of the joint family property fallen to the share of Maruti in terms of the settlement arrived on 23.12.1961. The settlement (Ex.111) is with Maruti and not Pandurang as he was alive on that day. Since, when the revenue entry was being recorded in 1970, after Maruti had died, Pandurang represented the estate of Maruti as Karta. In view of the said fact, the findings recorded by the High Court in para 9 are not tenable.

13. In fact, neither Geetabai (PW-1) nor Sopan (PW-2) had been suggested that the property was gifted by Raghunath to Pandurang. Pandurang has not said a word about the partition entered by four brothers on 23.12.1961. In the cross-examination, he admitted that there was a partition between his father and uncle before 1960 but he could not tell the exact year. He could not identify the signatures of his uncle on Ex.111, though he identified the signatures of Sopan (PW-2). He also admitted that he has not raised any objection regarding mutation entry no. 1274. He denied that his father had purchased any land at Pirangut. Though Pandurang has stated that Raghunath has gifted the property to him but no gift deed has been produced on record nor the immovable property could be gifted orally. Therefore, the stand of the Pandurang that the land was gifted to him is untenable. Therefore, the findings recorded by the High Court is without any evidence.

14. The principles of law enunciated in the above judgments are not in dispute. Since the evidence on record including written memorandum of settlement dated 23.12.1961 (Ex.111) and the mutation (Ex.104) show that Pirangut was a joint family property, therefore, the expression 'partition' has been used. There is no evidence that the property at Village Pirangut was gifted to Pandurang by Raghunath, the eldest son of Balaji. There is no evidence that Raghunath was the sole owner or that he acquired the property from his income. The categorical statement of Geetabai, the plaintiff is that her father-in-law was the

owner of the property at Pirangut. Even Sopan has also deposed to the same effect. He was examined as the surviving son of Balaji. In the absence of any evidence that Raghunath had the capacity to purchase the property as the documentary evidence in respect of partition of the property situated at Village Pirangut, the findings recorded by the High Court cannot be sustained.

15. The plaintiff and defendants including daughters of Maruti have equal share in the Pirangut and Lavale property in view of the judgment of this Court reported as ***Vineeta Sharma*** v. ***Rakesh Sharma & Ors.***[4]. Thus, Geetabai, the plaintiff, Pandurang, Krishnakant, Ramchandra, Muktabai, defendant Nos. 1 to 4, and Chandrakant, Ramesh, Uma, Shailaja and Sumitra, defendant Nos. 5 to 9 would have 1/10th share each. The share of Geetabai would devolve according to law of succession applicable. The purchaser shall be entitled to such interest in the property as its vendor had in terms of the above decree.

16. The preliminary decree is ordered to be granted in the said terms. The parties are directed to seek final decree from the competent Court in accordance with law.

17. The appeal thus stands allowed in the above terms.

Ankit Gyan Appeal allowed.
(Assisted by : Aarsh Choudhary, LCRA)

[4] (2020) 9 SCC 1