2024 INSC 498

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 5038 OF 2012**

**RAM @ RAMDAS SHESHRAO NEHARKAR** **… Appellant (s)**

***VERSUS***

**SHESHRAO BABURAO NEHARKAR AND OTHERS** **… Respondent(s)**

**J U D G M E N T**

**Rajesh Bindal, J.**

1. Aggrieved against the judgment[1] passed by the High Court[2], the plaintiff is in appeal before this Court. The appellant/ plaintiff had filed the suit[3] for partition and separate possession of the suit property. It was claimed that his mother Padminibai



1 Judgment dated 24.11.2009 passed in Second Appeal No. 14 of 2009
2 High Court of Bombay, Bench at Aurangabad
3 Regular Civil Suit No. 224 of 1994

had married with the respondent no. 1/defendant no. 1, and he was born from that wedlock. At the time of filing of the suit, the appellant was 35 years of age. Along with his alleged father, his wife and two sons were also impleaded as defendants.

2. The Trial Court[4] decreed the suit and directed for grant of 1/5$^{th}$ share to the appellant/plaintiff accepting the contention raised by the appellant/plaintiff that there was marriage between the respondent no. 1/defendant no. 1 and Padminibai, and that the appellant/plaintiff was born from that wedlock. The First Appellate Court[5] upheld the judgment and decree of the Trial Court *vide* judgment dated 13.08.2008[6]. In a challenge made by the respondents/defendants, the High Court reversed the judgment and decree of the Trial Court and the First Appellate Court and dismissed the suit filed by the appellant/plaintiff.

3. The contention raised by learned counsel for the appellant/ plaintiff was that the High Court should not have entered into the arena of re-appreciation of evidence led by the parties while hearing the second appeal. The Trial Court as well

4 Court of Joint Civil Judge (J.D) at Kaij, District Beed
5 Court of Ad-hoc District Judge -3, at Ambajogai, District Beed
6 Regular Civil Appeal No. 126 of 1998

as the First Appellate Court had concurrently found that the appellant/plaintiff had been able to establish his case about the marriage of respondent no. 1/defendant no. 1 with Padminibai and that the appellant/plaintiff was born from that wedlock. The findings by the High Court deserve to be set aside.

4. After hearing learned counsel for the appellant/plaintiff, in our opinion, no case is made out for interference in the present appeal. From the perusal of the judgment of the High Court, it is evident that the relevant facts to establish the factum of marriage of mother of appellant/plaintiff with respondent no. 1/defendant no. 1 were not considered by the Trial Court as well as the First Appellate Court. There were large scale discrepancies in the evidence led. The marriage was sought to be established by the appellant/plaintiff only by leading oral evidence. The material witness namely Padminibai, the so called mother of the appellant/plaintiff, who had allegedly married the respondent no. 1/defendant no. 1, was not produced in support of his case by the appellant/plaintiff.

5. Further, the suit was filed by the appellant/plaintiff nearly 16-17 years after he had attained majority. Prior to that

he never raised any claim against respondent no. 1/defendant no. 1 if according to him he was his father. The High Court has also noticed the fact that Padminibai, who is claimed to be the mother of the appellant/plaintiff had re-married claiming that the same was solemnized after she was abandoned by respondent no. 1/defendant no. 1. From the pleadings and oral evidence it was sought to be established, as if the marriage was a child's play. Firstly, the appellant/plaintiff has not been able to establish that there were any matrimonial relations between the respondent no. 1/defendant no. 1 and Padminibai. Secondly, even if there was any marriage, nothing is pleaded as to whether there was any divorce before she re-married. It has also come in record that the appellant/plaintiff had been residing in village Surdi, where Padminibai was living with her husband Rudrappa.

6. In a suit filed for partition and separate possession claiming that the appellant/plaintiff was the son of respondent no. 1/defendant no. 1, born from his marriage with Padminibai, very heavy burden was on the appellant/plaintiff to prove this fact, when the factum of marriage was denied by the respondent no. 1/defendant no. 1, as he was married to

Sheshbai (respondent no. 4/defendant no. 4). From the evidence led by the appellant/plaintiff, he had failed to discharge that burden. The High Court had rightly reversed the findings recorded by the Trial Court and the First Appellate Court, being perverse.

7. For the reasons mentioned above, we do not find any merit in the present appeal. The same is accordingly dismissed, with no order as to costs.

.....J.
(C.T. RAVIKUMAR)

.....J.
(RAJESH BINDAL)

New Delhi
July 9, 2024.