courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 06/09/2026

(2007) 11 BOM CK 0060

In the Bombay High Court

Case No : Second Appeal No. 38 of 1996

Hirasingh Sardarsing Parmar — APPELLANT

Vs

Ramkuwarbai Sardarsingh Parmar — RESPONDENT

Date of Decision : 29-11-2007

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2008) 1 ALLMR 671 : (2008) 1 BomCR 811

Hon'ble Judges : Pangarkar C.L., J

Bench : Single Bench

Advocate : B.N. Mohta, for the Appellant;

Final Decision : Allowed

Judgement

Pangarkar C.L., J.—This second appeal has been filed by the plaintiff who lost in the first Appellate Court.

2. The facts giving rise to this appeal are as under:

One Smt. Kesarbai was owner of the suit property. She died in the year 1955. She left behind her, plaintiff Hirasingh and two daughters namely: Durgabai and Ratnabai. Upon death of Kesarbai, it is alleged that the plaintiff and the two daughters became the owners of the suit property. They have decided to partition the said property. The two daughters namely: Durgabai and Ratnabai authorised present plaintiff Hirasingh to institute a suit on their behalf. The defendant is occupying the suit house even though she has no right whatsoever. She did not vacate the suit house inspite of the notice. Hence, the plaintiff instituted the suit.

3. The defendant resisted the suit. She denies that Kesarbai was the owner of the suit property. On the other hand, she submits that she is the step-mother of the plaintiff being widow of Sardarsingh. She contends that she was married to Sardarsingh after death of plaintiffs mother. The property belonged to Sardarsingh. He had purchased it in the name of first wife Benami. She,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hirasingh-sardarsing-parmar-...

therefore, submits that she has, as a widow, every interest in the suit property. She also contended that Sardarsingh before his death had executed a Will bequeathing the suit property in favour of the defendant. The defendant amended the written statement and contended that the suit filed by the plaintiff is bad in law, in as much as, the plaintiff has failed to make the daughters of Kesarbai parties to the suit. It is submitted by the defendant that if the property was received by Kesarbai from her paternal aunt then it becomes ''Stridhana'' and this Stridhana devolves upon the daughters only. She submits that since daughters have not instituted the suit, the suit is bad.

4. On these pleadings of the aparties, the learned Judge of the lower Court framed the issues. He found in favour of the plaintiff and decreed the suit. The learned a Judge of the first Appellate Court found that the suit was instituted aby a person who is not the owner of the suit house and suit was bad for non-joiner of necessary party. Holding so, he allowed the appeal and dismissed the suit.

5. Being aggrieved by that order of dismissal, this second appeal has been preferred.

6. The appeal was admitted by this Court on following two substantial questions of law.

1. Whether the Court below should have decreed the suit when the notice to vacate was issued by two sisters of plaintiff namely; Durgabai and Ratnabai and when they had authorised the plaintiff to institute the suit?

2. Whether the Appellate Court should have exercised the power vested in it under Order 1, Rule 10 and should have ordered joining of Durgabai and Ratnabai as party to the suit?

7. The suit has been instituted in the name of Hirasingh, the son of Kesarbai. It appears that plaintiff Hirasingh examined his sister Durgabai as a witness on 15/9/1992. She stated on oath in the Court that her mother Kesarbai got the suit property from her father''s sisters. It appears that, therefore, the defendant applied for amendment in the written statement on 30/9/1992 and raised a plea that the suit property is a Stridhana and would devolve upon the daughters only and not on plaintiff Hirasingh. It was contended that it was a Stridhana. Kesarbai died in 1955 that is before coming into force of the Hindu Succession Act, 1956. The case is, therefore, governed by the old Hindu Law. The property is admittedly received by Kesarbai from female and that too from paternal side. In Mulla''s Hindu Law the manner of Succession of Stridhana is given in Section 171(1), which reads thus-

171(1). According to the Bombay school, a female inheriting property from a female takes it absolutely, i.e. she becomes full owner thereof. Such property becomes Stridhana in her hands, so that in cases governed by Mitakshara, it passes to the Stridhana heirs mentioned in Section 147, Clause (2), and in cases governed by Mayukha, it passes to the Stridhana heirs mentioned in Section 151,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hirasingh-sardarsing-parmar-…

Clause II (See Illust.(l).

8. This property in the hands of Kesarbai was certainly, therefore, Stridhana. The Stridhana devolves according to old Hindu Law, as given in Section 147 Sub-section (2) of Mulla''s Hindu Law. It reads thus-

147(2) Other Kinds of Stridhana.-

Stridhana other than Shulka, passes in the following order:

(i) unmarried daughter; she takes before a married daughter. The rule applies to Jains in the absence of a special custom;

(ii) married daughter who is unprovided for;

(Hi) married daughter who is provided for;

(iv) daughter''s daughter;

(v) daughter''s son;

(vi) son;

(vii) son''s son.

It is thus clear that daughters of the deceased female take to the exclusion of the son. Therefore, Durgabai and her sister Ratnabai became the full owner to the exclusion of the plaintiff. This Court has formulated the above two substantial questions of law. If the initial pleadings of the plaintiff are seen, it is averred that the property belonged to mother of the plaintiff and, therefore, he and his sisters have become owners and sisters have given consent to institute the suit. There is no whisper about the property having come to Kesarbai from a female relative and how she exactly became the owner. Therefore, ordinarily the property, of mother would have devolved upon the sons and the daughters had it not been a Stridhana. With those simple allegations in the plaint, the plaint could not be said to be instituted by a wrong person totally. The property was a Stridhana transpired only after Durgabai was examined in the Court. The plaintiff should have applied for addition of his sister as plaintiff in the suit. Mr. Mohta, learned Counsel for the appellant, submitted that the plaintiff and his lawyer both were under a bona fide belief that this suit would not fail since Durgabai stated on oath that she has authorised the plaintiff to institute a suit. He submitted that it was, therefore, a bona fide mistake that the daughters were not added as a party to the suit. It is the duty of the Court to see that every matter is finally and effectually decided. When it is found, in fact, that the party has a good case, it should not loose due to the follies. The object of Order 1, Rule 10 is to discourage contest of technical pleas and to save honest and bona fide claimant from being non suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Without the presence of these Durgabai and Ratnabai, the suit could certainly not be finally and effectually decided and for final and effectual adjudication, it is necessary that both of them.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hirasingh-sardarsing-parmar-…

should be before the Court.

9. Further more, in this case, in fact, there was no impediment in adding two sisters as party. There is no doubt that the plaintiff is dominus litus and can resist other person being added as party- plaintiff. In the instant case, it is clear that the plaintiff himself says that his two sisters are also owners and they have authorised him to file the suit. The existing plaintiffs interest is not adverse to that of his two sisters who are to be added. Had it been adverse, the Court might not add any person particularly as plaintiff against the wish of the existing plaintiff. Since the interest of the present existing plaintiff and that of two sisters is identical and common. I, therefore, find that this was, in fact, a fit case where the power conferred on the Court to add party should have been exercised and a direction should have been given to add twp sisters as co- plaintiffs.

10. The appeal, therefore, must succeed. The appeal is allowed. The matter stands remanded to the trial Court. The trial Court should add the two sisters Durgabai and Ratnabai as co-plaintiffs and decide the suit afresh.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hirasingh-sardarsing-parmar-…