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**(2018) 04 BOM CK 0158**  
**In the Bombay High Court**  
**Case No : Second Appeal No.410 of 1997**

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|--------------------------------------------------|------------|
| SMT ZIBLABAI M. RAMTEKE THR.LRS.DEORAO M.RAMTEKE | APPELLANT  |
| Vs                                               |            |
| KISAN D.RAMTEKE                                  | RESPONDENT |

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**Date of Decision :** 20-04-2018

**Acts Referred:**

**Citation :** (2018) 04 BOM CK 0158

**Hon'ble Judges :** MANISH PITALE, J

**Bench :** Single Bench

**Advocate :** M.V. Masodkar, P.V. Kaore

**Final Decision :** Allowed

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## Judgement

1. The appellants herein are the original plaintiffs, who have challenged the judgment and order dated 12-09-1997, passed by the Court of

Additional District Judge, Nagpur (appellate Court) in Regular Civil Appeal No.160 of 1987, whereby the appeal filed by the respondents (original

defendants) has been allowed and judgment and decree passed by the Court of Civil Judge, Junior Division, Umrer (trial Court) has been set aside

and suit filed by the appellants has been dismissed.

2. The facts of the present case are as follows :—

Motiram (predecessor of the appellants) and Ganpat were brothers. Zibalabai was the wife of Motiram and Tukadibai was the wife of said

Ganpat. Motiram and Ganpat were sons of one Laxman and they were in ownership and possession of their respective properties. Ganpat and

Tukadibai were issueless while Motiram and Zibalabi had two daughters and two sons. The said Motiram filed suit for possession in respect of

agricultural field in Kh. No.50 at mouza Kitadi and Kh. No.05 at mouza Ranbodi,

which were fields belonging to his brother Ganpat, on the basis that Ganpat had died in the year 1967 and his widow Tukadibai died in the year 1974. It was his case that since Ganpat and Tukadibai were issueless, the properties belonging to Ganpat were inherited by him. It was his case that after the death of Tukadibai, the respondents had taken forcible possession of the suit properties under the impression that there were no legal heirs in respect of the properties. The respondents were the sons of Tukadibai's sister Saibai.

3. According to said Motiram, when the respondents resisted his claim on the suit properties, he had sent notice by registered post to them and thereafter, he was constrained to file the said suit for possession bearing Regular Civil Suit No.83 of 1976, before the trial Court. As the said Motiram died during the pendency of the suit, the appellants, being his widow and children were brought on record.

4. The respondents appeared before the trial Court and opposed the contentions raised on behalf of the appellants. They submitted that said Ganpat had performed a Pat marriage with their mother Saibai who was the sister of Tukadibai. They further claimed that during his life time Ganpat had partitioned the suit property belonging to him amongst his two wives Tukadibai and Saibai in equal shares. They further claimed that on 01/04/1967, their mother Saibai had executed registered Sale Deed in respect of the share that came to their mother in pursuance of the aforesaid partition and further that upon the death of Tukadibai, they came into possession of the entire suit property. It was further claimed that an earlier suit bearing Regular Civil Suit No.69 of 1967 had been filed against them and their mother Saibai for possession, which had been dismissed and that therefore, the suit filed by the predecessor of the appellants was not maintainable.

5. On the basis of the pleadings, the parties led evidence before the trial Court. The respondents relied upon the aforesaid Sale Deed (Exhibit 65) and witnesses were examined by both the parties. The trial Court framed issues for determination, including an issue pertaining to whether said Saibai had married Ganpat and whether the alleged partition by Ganpat between his two wives was proved and further as to whether the present suit was barred by the earlier Civil Suit filed against the

respondents and their mother Saibai.

6. On the basis of the evidence and material on record, the trial Court found that since the earlier suit for possession was filed by Tukadibai

against the respondents and their mother Saibai, it could certainly not be an impediment for maintaining the suit filed by Motiram

(predecessor of the appellants). The trial Court found that the respondents had failed to prove Pat marriage between Ganpat and their mother

Saibai and further that the alleged partition between Tukadibai and Saibai was also not proved. On this basis, the trial Court found that the

respondents had failed to prove their right in the suit property. It was found that when Ganpat and Tukadibai had died issueless, the

property was justifiably claimed by the appellants. It was also found that the respondents were actually children born to Saibai from her

husband Dharma. On this basis, the trial Court granted decree in favour of the appellants and directed the respondents to deliver possession

of the suit properties to the appellants.

7. Aggrieved by the same, the respondents filed Regular Civil Appeal No.160 of 1987, before the appellate Court. By the impugned judgment and

order, the appellate Court has reversed the findings of the trial Court, holding that Pat marriage between Ganpat and Saibai was proved and that

Saibai was competent to execute Sale Deed in respect of the suit property. On this basis, the appellate Court allowed the appeal and dismissed

the suit of the appellants.

8. Aggrieved by the same, the appellants filed the present appeal which was admitted by an order dated 30.06.1998, on the following

substantial questions of law :?

â??(i) While considering the issue whether it was proved on record that Saibai had performed pat with Ganpat, and the reliance placed upon the

reported Judgment of the Apex Court in AIR 1978 Supreme Court 1557, with 1986 MLJ 989, the entire approach of the First Appellate Court was

totally erroneous in upsetting the finding of the Trial Court that the original defendants had failed to prove the marriage between Ganpat and Saibai by

pat.

(iii) The First Appellate Court has completely erred in placing the reliance upon the judgment of the Supreme Court reported in AIR 1978

Supreme Court, 1557, as the Honourable Supreme Court in the said Judgment, only says that a strong presumption could be raised in favour of a marriage if the parties to a marriage have resided together for a continuously long period, as husband and wife. The parties to a marriage have represented themselves to the society at large that they were husband and wife, and no room for suspicion can be found in the given set of facts. The First Appellate Court has completely failed to consider that the Trial Court had rightly appreciated that there was no evidence either to the marriage or that deceased Ganpat and Saibai were residing together as husband and wife for a continuously long period. The First Appellate Court further failed to consider that Saibai was the real sister of Tukdibai and there could never be a marriage with the husband of the real elder sister during her life time. Thus the First Appellate Court has totally lost sight of the material questions involved and has reversed the findings of the Trial Court on the grounds which were without any basis. The First Appellate Court therefore has committed gross illegality which has resulted into miscarriage of justice.

9. The above quoted substantial questions of law, on which this appeal was admitted pertained to the issue as to whether Patmarriage between Ganpat and Saibai was at all proved by the respondents to sustain their claim in respect of the suit properties. The issue pertaining to alleged Patmarriage between said Ganpat and Saibai is crucial to the claims of the respondents because in the absence of proof of the same, there is nothing to show that the respondents can sustain their claim in respect of the suit properties as Ganpat and his wife Tukadibai had admittedly died issueless. The trial Court while considering the aforesaid issue regarding Patmarriage has taken into consideration the evidence brought on record. Since there is no documentary evidence regarding the same, only the oral evidence was analyzed. The oral evidence on behalf of the respondents in support of the said plea of Patmarriage is that of DW1 Vithoba (defendant no.3) and DW2 Govinda who claimed to be knowing the said Ganpat. The said DW1 Vithoba stated in his evidence that his father Dharma died during his childhood and thereafter his mother Saibai performed Patmarriage with said Ganpat. In his cross examination he stated that the Pat

marriage was performed about 32/35 years ago. This shows that he was a child when the alleged Pat marriage took place between his mother Saibai

and said Ganpat. DW2 Govinda stated that he knew Ganpat and that Pat marriage between Saibai and Ganpat took place in the year

1946-1947. But in cross examination, he admitted that he belongs to 'Kunbi' caste and that he had not attended the Pat marriage. In cross

examination his version about the Pat marriage having taken place was challenged.

10. This is the only evidence in respect of the alleged Pat marriage between Saibai and Ganpat. No person belonging to the community of the

parties was produced before the Court to prove as to whether there was a custom of Pat marriage in the community. The marriage between

Ganpat and Saibai allegedly took place during the life time of Tukadibai who was the wife of Ganpat. There was no evidence on record to

show that there was indeed a custom in the community regarding such Pat marriage. The trial Court took into consideration the aforesaid

evidence and found that the same was not believable. Accordingly, the trial Court disbelieved the theory of Pat marriage and consequently

it was held that since Ganpat and Tukadibai had died issueless, the appellants were entitled to their claim in the suit properties. On this basis, the

suit was decreed.

11. The appellate Court reversed the said finding and it has placed reliance on the order of the Hon'ble Supreme Court in the case of Badri Prasad

Vs Dy. Director of Consolidation and others, reported at AIR 1978 SC 1557, wherein the Hon'ble Supreme Court has held that when a man

and woman live as husband and wife in Society, they cannot be compelled to prove years later that they were validly married, by

eye-witness evidence. In this light, the appellate Court has analyzed the aforesaid evidence of DW1 Vithoba and DW2 Govinda. The

appellate Court has concluded that since the oral version of DW2 Govinda that Saibai and Ganpat had performed Pat marriage and that they

had cohabited was not challenged in cross examination, it had to be held that such Pat marriage stood proved. A perusal of the evidence of the

aforesaid DW2 Govinda and his cross examination shows that firstly, he has admitted that he did not attend the marriage and secondly, that

specific challenge was raised to his version about Pat marriage between Saibai and Ganpat. This is evident from the suggestions made on

behalf of the appellants in his cross examination. Therefore, the appellate Court has committed a clear error in holding that the version of DW?

Govinda has remained unchallenged.

12. Insofar as the reliance on the order of the Hon'ble Supreme Court in the case of Badri Prasad (supra) is concerned, it was first necessary for

the respondents to have established with cogent evidence on record that Ganpat and Saibai had indeed lived as married couple for years

together and more importantly that such a Pat marriage during the life time of Tukadibai (undisputed wife of Ganpat) was permitted in the

community to which the parties belonged. In the absence of any such material on record, the appellate Court erred in setting aside the findings

of the trial Court and holding that the evidence of DW Govinda was enough to prove the claim of Pat marriage between Ganpat and Saibai.

The findings rendered by the appellate Court are therefore, rendered perverse, as they are based on erroneous appreciation of the evidence and material on record.

13. Once it is found that the aforesaid Pat marriage claimed by the respondents was not proved, the entire theory on the basis of

which the respondents have made claim on the suit properties, is rendered unsustainable. The claim that Ganpat had partitioned the suit

property between Tukadibai and Saibai without keeping any share with himself is also wholly unbelievable. In fact, the trial Court had

disbelieved the aforesaid claim of partition and the appellate Court has not adverted to this aspect at all. Further claim of the respondents that

their own mother Saibai executed Sale Deed in respect of her share in the suit properties which came to her through the alleged partition, is also

unbelievable. In this context, the findings rendered by the trial Court are found to be based on proper appreciation of the material and

evidence on record to the effect that the respondents were unable to trace any valid source of title and ownership in the suit properties. The

entire chain of events claimed by the respondents, starting with alleged Pat marriage between their mother Saibai and Ganpat, right up to the

alleged Sale Deed executed by their own mother in their favour, is not supported

by evidence and material on record.

14. As the very source of right and title in the suit properties of Saibai is not established, the respondents cannot support their claim on the

basis of the aforesaid Sale Deed. Therefore, the above quoted substantial questions of law, on which this appeal was admitted, are

answered in favour of the appellants and against the respondents. It is held that the appellants have established that Ganpat and Tukadibai

died issueless in 1967 and 1974 respectively and that the appellants being the only legal heirs were entitled to inherit the suit properties. The

respondents failed to establish their claim in the suit property based on alleged marriage between Ganpat and Saibai, as also the alleged

partition between Saibai and Tukadibai carried out by Ganpat, which was the basis of alleged Sale Deed executed in their favour in

respect of part of the suit property by their own mother Saibai.

15. In the light of the above, it is evident that the impugned judgment and order passed by the appellate Court is unsustainable. Accordingly, this

appeal is allowed, the impugned judgment and order of the appellate Court is set aside and the judgment and decree passed by the trial Court in

favour of the appellants is restored. There shall be no order as to costs.