Bombay High Court
Babu Jyotiram Jadhav And Others vs Muktabai Wamanrao Somwanshi on 2 December, 2021
Bench: V. V. Kankanwadi

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.402 OF 2019
WITH
CIVIL APPLICATION NO.8433/2019
CIVIL APPLICATION NO.8434/2019

1. Babu s/o Jyotiram Jadhav
and Ors. = APPELLANTS
(Orig.Deft.Nos.1, 4
and 5)

VERSUS

Muktabai w/o Wamanrao Somwanshi = RESPONDENT
(orig.Plaintiff)

Mr.Mukul S.Kulkarni, Advocate h/for Mr. Kiran T.Jamdar, Advocate for Appellants;

Mr.GR Syed, Advocate for Respondent No.1;

Mr.VD Godbharale, Advocate for Intervenor.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 03/09/2021 PRONOUNCED ON : 02/12/2021 PER COURT :-

1. The second appeal has been filed by original defendant Nos.1, 4 and 5 to challenge concurrent judgment and decree. Present Respondent No.1 is original plaintiff, who had filed Regular Civil Suit No.472/2005 before Civil Judge, Junior Division, Udgir, District Latur for partition and separate possession. The learned Trial Judge decreed the suit on 15.1.2014 and held that, the plaintiff has 1/6th share in Survey No.70/1/1/, admeasuring 4 hectares and 75 Ares, situated at village Madalapur, Tq. Udgir, District Latur. Original defendant No.1 alone, filed Regular Civil Appeal No.9/2014 to challenge the said judgment and decree. The said appeal came to be dismissed by learned District Judge-1, Udgir District Latur on 20.12.2018. Hence, the present Second Appeal.

2. Heard learned Advocates appearing for the respective parties.

3. It has been vehemently submitted on behalf of the appellants that both the Courts below have not considered the evidence and the law points involved properly. The relationship between the parties

has not been denied. The plaintiff and defendant No.3 are sisters and defendant No.1 is their brother, inter se. Original defendant No.2 was their mother. Their father - Jyotiram Gunda Jadhav expired on 14.12.1998, who has left behind the suit property. According to the plaintiff, deceased Jyotiram had given 2 hectares and 42 R. land in the name of defendant No.1 just to take benefit of some Government Schemes. However, there was no actual partition of the property because no share was given to defendant No.2. The said property was divided into plots and, therefore, its price has gone up. The plaintiff contended that defendant Nos.1 to 3 intended to oust the plaintiff from inheritance and, therefore, she demanded her share from the suit property, however, it was refused and, therefore, she had filed the suit. Defendant Nos.1 and 2 had filed their Written Statement. However, later on, defendant No.2 expired. They had contended that the suit property was partitioned by deceased Jyotiram in the year 1982. They denied the fact that the plaintiff and defendants are members of joint family. Two hectares and 42 R land was given to defendant No.1 and rest of the property was kept by Jyotiram in the name of himself and defendant No.2 in the year 1982. Mutation entry to that effect was effected and, therefore, now the plaintiff has no right to claim share in the property. Even defendant No.3 - another sister, has supported the defendant Nos. 1 and 2. According to her, the said partition was effected with the consent of the plaintiff and defendant Nos. 1 and 2. It was then contended that after the said property came to the share of defendant No.1 in the partition of 1982, wife of defendant No.1 had lodged partition suit bearing RCS No.101/2003 on behalf of her minor sons, i.e. present appellant Nos.2 and 3 (original defendant Nos.4 and 5) in which there was compromise and half share each was given to them, thereby now defendant Nos.4 and 5 have become exclusive owners of part of the property. Defendant Nos.4 and 5 have also filed similar Written Statement.

. It has been further contended by the learned Advocate for the appellants that in spite of leading cogent and conclusive evidence, both the Courts have wrongly held that the suit property was ancestral and joint Hindu family property of the plaintiff and the defendants. It was wrongly held that defendant No.1 and deceased deft.no.2 failed to prove that there was previous partition effected by Jyotiram in the year 1982. Under those circumstances, it was held that the plaintiff is having 1/6th share. In fact, after the partition, half of the same became exclusive property of deft.No.1 and rest of the property went to deft.No.2. Therefore, on the date of the suit, no property was left, which can be said to be either ancestral or joint family property. Both the Courts below have wrongly held that the deft.Nos. 1 and 2 have not proved that partition of suit land was effected in the year 1982 during life time of father of deft.No.1.,in spite of the fact that even defendant No.3 was supporting defendant Nos.1, 4 and 5 and specifically contended that it was the partition with the consent of all the persons. It has been further contended that the evidence would show that previous partition was proved and, therefore, the suit ought to have been dismissed in toto.

4. It has been further submitted on behalf of appellants that both the Courts below have not properly considered the law point involved in the case and went on to observe that the case is governed by amended Section 6 of the Hindu Succession Act (as amended in 2005). Both the Courts failed to consider that plaintiff got married in the year 1966 and defendant No.3 got married in 1965. Therefore, even now, those daughters cannot get benefit of the Amendment to the Hindu Succession Act, in view of amended Section 6 of the said Act, as admittedly, plaintiff Nos.1, and deft.Nos. 2 and 3 were married even prior to 1994. Section 29-A of the Hindu Succession Act, which was

Maharashtra Amendment, made a specific provision and gave right to unmarried daughter/s after the said Act came into force w.e.f. 22nd June, 1994. Though now all the daughters have been made co-parceners; yet we are required to see that Section 29-A of the Hindu Succession Act, i.e. Maharashtra Amendment, had received assent of Hon'ble President of India in view of Article 254(2) of Constitution of India. After Section 6 of the Hindu Succession Act was amended by the Central enactment, the Centre has not repealed Section 29-A of the Hindu Succession Act. Further, the learned Advocate has also taken support to Section 6 of the General Clauses Act in order to support his contention to canvass that Section 29-A of the Hindu Succession Act is still in force and would prevail as it is, thereby it will not give equal share to the daughters, who were married prior to 1994.

. Learned Advocate appearing for the appellants has taken this Court through Seventh Report on The Hindu Succession (Amendment) Bill, 2004, which appears to be a copy downloaded through the internet, in order to bring to the notice of this Court as to what was the amendment proposed and what were the objections received etc. However, it can be said that since the Act is implemented now, we need not go into the aspect as to what were the objections etc. before Parliament. He has then relied on a decision in the case of Prakash and Ors. Vs. Phulwati and Ors. (2016) 2 SCC 36, wherein at that time, the Hon'ble Supreme Court had taken a view that Section 6 of the Hindu Succession Act, as substituted by Hindu Succession (Amendment) Act 39 of 2005, has no retrospective effect, but it applies only when both co-parcener and his daughter were alive on date of commencement of Amendment Act, i.e. 9.9.2005, irrespective of date of birth of daughter and coparcener who died thereafter. It was further submitted that Section 29-A of The Hindu Succession Act, as inserted by Maharashtra Amendment Act, 1994, was pari materia with Section 29-A,(as inserted by Hindu Succession (Tamil Nadu Amendment)Act, 1989 w.e.f. 25.3.1989.

5. There is direct decision of the Hon'ble Apex Court in respect of the said provision under the Tamil Nadu Amendment Act, 1989 in the case of Mangammal alias Thulasi and Anr. Vs. T.B.Raju and Ors. - (2018) 15 SCC 662, wherein, it was held thus, -

"Under Section 29-A of the Hindu Succession Act, 1956 (as inserted by the Hindu Succession (Tamil Nadu Amendment) Act, 1989), the legislature has used the word "the daughter of a coparcener". Here the implication of such wordings mean both the coparcener as well as the daughter should be alive to reap the benefits of this provision at the time of commencement of the amendment of 1989. A similar issue has been dealt with by the Supreme Court in Prakash Vs. Phulwati -

(2016) 2 SCC 36.Thus, only living daughters of living coparceners would be entitled to claim a share in the ancestral property. In the present case, the father of the appellant daughters had already died on 29.12.1979, i.e. before the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 with effect from 25.3.1989. Hence, the appellant daughters were not the coparceners in the Hindu joint family property in view of the 1989 amendment. Consequently, they were not entitled to claim partition and separate possession at the very first instance. At the most, they could claim maintenance and marriage expenses if situation warranted.

However, on the death of their father and mother, the appellants would get their property through succession in the manner as prescribed in paras 18 and 19 of the judgment herein."

6. He further submits that in Vineeta Sharma Vs. Rakesh Sharma and Ors., (AIR 2020 SC 3717) three-Judges Bench of the Hon'ble Apex Court has only partly overruled the decision in the case of Mangammal (supra). However, the fact remains that in the present situation, after Section 6 of the Hindu Succession Act, 1956 was amended in 2005; yet the Centre has not notified or declared that Section 29-A of The Maharashtra Amendment to Hindu Succession Act, as repealed and, therefore, the daughters, who were married prior to 1994, will not get any share in the property left by their father. In view of this legal position canvassed, substantial questions of law are arising in this case, requiring admission of the Second Appeal.

7. Per contra, learned Advocate appearing for Respondent No.1, i.e. original plaintiff, supported the reasons given by both the Courts below and submitted that since the Trial Court has held that the suit properties are ancestral and joint family properties, the plaintiffs and defendants have share in the same. It was submitted that in view of the pronouncement on the point in the case of Vineeta Sharma (supra), the daughters have been given equal share and thee- Judges Bench of the Hon'ble Supreme Court had not accepted the view taken by the Bench deciding Mangammal's case. Therefore, Section 6 (as substituted by Hindu Succession (Amendment)Act, 2005, w.e.f. 9.9.2005, would be applicable and, the decision by both the Courts below cannot be said to be perverse or illegal. No substantial questions of law are arising in this case.

8. First of all, it is to be seen as to whether the defendants, who had come with a case that there was partition effected by Jyotiram in the year 1982, was proved by them or not ? In order to support that contention, the only document, which is on record, is mutation entry dated 17.8.1982, Prior to that, in fact, none of the parties, especially the defendants, have produced any document on record to show that Jyotiram had purchased the said property from his own income or joint family income. The plaintiff had come with a case that it was ancestral property. When the defendants have not produced any such evidence to show that it was self-acquired property of Jyotiram, the plaintiff's contention will have to be accepted. Jyotiram being Karta of the family could have effected partition. But it is to be noted that he could not have done it in un-equal manner. By the alleged partition, he is said to have given half of the share to defendant No.1. If we consider the position in the year 1982, then though the daughters may not be getting any share in that property directly as coparcener, but when there would be partition between father and the son, then definitely, mother would get equal share. Therefore, there ought to have been three equal shares of 4 hectares and 75 Ares land. In that event, defendant No.1 could not have got half of the share. Further, it is to be noted that it was only oral partition that is pleaded. No doubt, the plaintiff has taken a plea that, that partition appears to have been effected to get benefit of certain Government schemes; but she was not aware about the same. At the same time, the defendants have not pleaded nor proved as to what reason arisen for Jyotiram to effect the said partition. It is not a case of the defendants that defendant No.1 was not looking after the parents or defendant No. 1 himself had demanded partition. Under such circumstance, when the said alleged partition is unequal, it cannot be accepted as partition effected and can be protected under law. The oral evidence to prove the oral partition led by defendants has been discarded by both the Courts and it can not be gone into in Second Appeal. Both the Courts

have rightly held that merely because the plaintiff had never challenged the said mutation entry, it cannot be taken that she had accepted that partition. Interesting point to be noted is that the defendants appear to have also come with the defence, which could be found only in the judgment of the first Appellate Court that submission was made on behalf of original defendant No.1 that when the partition was effected in the year 1982 between defendant Nos.1, 2 and Jyotiram, an amount of Rs.10,000/- was given to the plaintiff as well as defendant No.3 each in lieu of their share. No evidence to that effect has been produced as it appears from the judgment of the Trial Court and in fact, it was beyond the pleadings, those submissions were made. If we consider that submission then, in a way, defendant No.1 was accepting that the plaintiff and defendant no.3 had share in the suit property. Thus, defendant Nos.1, 4 and 5 cannot blow hot and cold at the same time.

9. As aforesaid, the alleged partition said to have been effected orally and then mutation entry No.134 (Exh.9) dated 17.8.1982, was taken; then such oral partition could not have been protected under Section 6 of the Amendment to Hindu Succession Act, 2005 w.e.f. 9.9.2005 as proviso to sub-section (4) to the said Section protects only written partition. Both the Courts below have, therefore, properly appreciated the evidence and concluded that the defendants have failed to prove previous partition allegedly effected in the year 1982.

10. The main point, that has been now tried to be contended, is that Section 29-A of the Hindu Succession Act is still in operation and, therefore, the married daughters, i.e. those daughters, who were married prior to 1994, will not get any share either in the ancestral or joint family property. There is no doubt, the said provision, i.e. Section 29-A of the Hindu Succession Act, had received the assent from the Hon'ble the President of India and definitely, it would be in view of Article 254(2) of the Constitution of India. A limited right was given to the daughter earlier and, therefore, in order to widen the scope and the rights, along with and after certain States made amendment; the Maharashtra State amended the law and gave right to the daughter equivalent to sons by making her co- parcener. However, it was limited to those daughters, who were unmarried at the time of coming into force of the said provision. It can be seen that that provision, i.e. Section 29-A of the Hindu Succession Act, was repugnant to the earlier Act or old Hindu Law then prevailing and, therefore, it can be said that the assent of the Hon'ble President of India was necessary in view of the clause (2) of the said provision.

11. In Kaiser-I-Hind Pvt. Ltd. And Ors. Etc. Vs National Textile Corporation Ltd. And Ors. - AIR 2002 SC 3404 (Full Bench) , following are the observations made by the Hon'ble Apex Court, -

> ".....For the State law to prevail, following requirements must be satisfied
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> -
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> (1) law made by the legislature of a State should be with respect to one of the matters enumerated in the Concurrent List;
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> (2) it contains any provision repugnant to the provision of an earlier law made by the Parliament or an existing law with respect to that matter;

(3) the law so made by the Legislature of the State has been reserved for the consideration of the President; and (4) it has received 'his assent'. . In view of aforesaid requirements, before obtaining the assent of the President, the State Government has to point out that the law made by the State legislature is in respect of one of the matters enumerated in the Concurrent List by mentioning entry/entries of Concurrent List and that it contains provision or provisions repugnant to the law made by the Parliament or existing law. Further, the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by the Parliament and the necessity of having such a law, in facts and circumstances of the matter, which is repugnant to a law enacted by the Parliament prevailing in a State. The word 'consideration' would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by the Parliament, the President may grant assent. This aspect is further reaffirmed by use of word "assent" in Clause (2) which implies knowledge of the President to the repugnancy between the State law and the earlier law made by the Parliament on the same subject matter and the reasons for grant of such assent. The word "assent" would mean in the context as an expressed agreement of mind to what is proposed by the State."

12. It can be, therefore, presumed that the aforesaid position of law would have been considered by the Hon'ble President of India when assent was given to Section 29-A of the Hindu Succession Act (Maharashtra Amendment).

13. At the same time, another Full bench decision of the Hon'ble Apex Court in the case of M.Karunanidhi Vs. Union of India -AIR 1979 SC 898, is worth considering, wherein, it has been observed thus, -

"Repugnancy between a law made by a State and by the Parliament may result from the following circumstances :

(1) Where the provisions of a Central Act and a State Act the

Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

(2) Where however if law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with cl.(2) of Art. 254.

(3) Where a law passed by the State legislature while being substantially

> within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List an entrenchment, if any, being purely incidental or inconsequential.
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> (4) Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with or repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Art 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254". (stress supplied)

14. Further, we can also take note of T.Barai Vs. Henri Ah Hoe and Anr - AIR 1983 SC 150, wherein, it has been observed, -

> "Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. To the general rule laid down in clause (1), clause (2) of Article 254 engrafts an exception. The result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a Concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the Proviso to clause (2) of Article 254. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1)". (stress supplied)

15. It can be seen that the law on the point of Succession is at Entry No.5 of the Concurrent List, i.e. List No.III in the Seventh Schedule. Article 254 of the Constitution gets attracted only when both Central and State legislations have been enacted on any of the matters in the said List and there is conflict between two legislations. The basic principle is that the Central legislation will prevail as Article 254(1) of the Constitution gives supremacy to the law made by the Parliament. We have

considered earlier as to how Section 29-A of the Hindu Succession Act, as amended in the Maharashtra, was repugnant to the old Hindu Law. As stated in T.Barai's case (supra), the general rule, laid down in clause 1 of Article 254; clause 2 engrafts an exception viz., if the President assents to a State Law, which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to earlier law of the Union. However, the Constitution itself makes a proviso to clause 2 and provides that, nothing in clause 2 of Article 254 shall prevent the Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. Now, it is to be seen that in the year 2005, the Union Government brought an amendment to Section 6 of the Hindu Succession Act and made the daughters as coparceners and this has been done with a view to give equal rights to the daughters in comparison to sons. When the Maharashtra State Amendment was restricted to un-married daughters (excluding the daughters, who were married prior to 1994), no such distinction has been made in Section 6 of the amended provision by the Union Government and, therefore, the repugnancy existed. In view of the proviso, when Parliament exercised its power to bring a new legislation, the said enactment will prevail. In view of the law laid down in the aforesaid three pronouncements, it was not necessary for the Parliament to repeal Section 29-A of the Hindu Succession (Maharashtra Amendment) Act. Taking into consideration both the enactments, i.e. Section 29-A and Section 6, as amended in 2005, they cannot stand together and, therefore, the law made by the Parliament would prevail over the State Law in view of Article 254(1) of the Constitution of India.

16. In view of the decision in the case of Vineeta Sharma (cited supra) even father need not be alive and the earlier law on this point in the case of Prakash and Ors. Vs. Phulwati and Ors. (2016) 2 SCC 36, stood overruled.

17. One more aspect has been tried to be submitted on the basis of the decisions in the cases of Mangammal and Vineeta Sharma (cited supra), is that the decision in the case of Mangammal has been partly overruled. In this connection, discussion made in para Nos.81 and 82 in the decision in the case of Vineeta Sharma, would make it crystal clear that, the same point now tried to be agitated by the present appellants, by taking help of the decision in the case of Mangammal, has been overruled by the three-Judges Bench of the Hon'ble Apex court in Vineeta Sharma's case.

18. Further, it is also to be noted that in the decision of Mangammal, reliance was placed on the decision in the case of Prakash Vs. Phulwati (cited supra) and in Vineeta Sharma's case, observations made in para No.139 would be very much important, wherein it has been held, -

> "In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in Prakash v. Phulavati and Mangammal v. T.B. Raju & Ors. The opinion expressed in Danamma @ Suman Surpur & Anr. V Amar is partly overruled to the extent it is contrary to this decision."

19. Under such circumstance, the Central enactment, i.e. Section 6 (as substituted by the Hindu Succession (Amendment) Act, 2005, w.e.f. 9.9.2005, would be applicable to this case and in view thereof, the plaintiff has share in the suit property, which has been rightly adjudicated by both the

Courts below.

20. No substantial question of law, as contemplated under Section 100 of CPC is arising in this case, requiring admission of the Second Appeal. Therefore, for the aforesaid reasons and in view of the decision in the case of Kirpa Ram (deceased) through Lrs. and others Vs. Surendra Deo Gaur and others, [2021 (3) Mh.L.J. 250]., the Second Appeal deserves to be dismissed at the threshold. It deserves to be dismissed.

21. Civil Application No.8434/2019 is moved by the applicant - Minakshi Baburao Jadhav, seeking leave to file Second Appeal against the judgment and decree passed by the first Appellate Court. The applicant is wife of original defendant No.1 and mother of original defendant Nos.4 and 5. She has come with a case that during life time of original defendant No.2, i.e. her mother-in-law, she had executed a will in favour of the applicant on 14.10.2006 and, therefore, she has become owner of other half share of the property. She has tried to produce the will.

22. At the outset, it is to be noted that the Trial Court decided the matter on 15.1.2014. That means, the matter was before the Trial Court itself for about eight years. There was no attempt by defendant No.1 or deft.Nos. 4 and 5 to disclose it to the Court that any such will has been left by deft.No.2. Further, it can also be seen from the documents, which have been attached to this civil application, that the present applicant had filed M.A.No.12/2003 before Civil Judge, Senior Division, Udgir for issuance of Probate. However, it appears that she never disclosed in that application that already a suit is pending in spite of the property allegedly bequeathed in her favour. It is also stated in the impugned order that citation and public notice was issued in Daily newspaper viz. "Yeshwant", which appears to be a local newspaper. In spite of having knowledge that the present plaintiff is contesting the said suit, the applicant had not made the plaintiff as party to the application and, therefore, her application to allow her to file appeal, at this stage, cannot be allowed.

23. From another angle also the fact can be noted that in view of detailed order, that has been passed in the Second Appeal, observing as to how the plaintiff has share in the property, it can also be said that deft.No.2 had no authority to execute the will in favour of the applicant.

24. One more aspect to be noted is that though the husband and sons had every knowledge about the suit, it is hard to believe that the applicant, who is residing with them, had no knowledge about the suit that was filed; the decree that was passed and the appeal was filed by the husband. There was no attempt on the part of the applicant to contest or get herself added as respondent in Regular Civil Appeal No.9/2014. The order in Probate proceeding has been passed on 7.1.2014. Regular Civil Appeal No.9/2014 was filed by the original deft.No.1 on 24.2.2014 and it can be seen that he had also never disclosed it to the Appellate Court that any such will has been left by his mother in favour of his wife and probate has been granted in favour of his wife. The first Appellate Court decided the matter on 20.12.2018. That means for about four (4) years, nine (9) months and Twenty-six (26) days, the matter was before the first Appellate Court; yet once again no attempt was made by the present applicant to get herself added as party to the proceeding or challenge the decree passed by the Trial Court independently in her own capacity. In view of this, the present application does not deserve to be allowed.

25. For all the reasons above stated, the Second Appeal stands dismissed. The civil applications also stand rejected.

(SMT. VIBHA KANKANWADI) JUDGE BDV Later on :

. Learned Advocate appearing for the appellants, after pronouncement of the judgment, prays for continuation of the interim relief. It is to be noted that all the three Courts including this Court have not accepted the defence that has been taken by the present appellants. The suit was filed in the year 2005 and the fruits of the decree are yet to be enjoyed by the original plaintiff. Under such circumstance, oral request stands rejected.

(SMT. VIBHA KANKANWADI) JUDGE BDV