



varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 296 OF 1993**

1. Anusaya Baburao Kale
(since deceased) through Legal Heirs
- 1.A. Balabai Vishnu Nimbalkar
- 1.B. Shivaji Ishwar Hetkale (since deceased)
both resident of Raviwar Peth, Satara.
- 1B1. Nirmala Shivaji Hetkale
House No. 66, Lonar Gali,
Behind Gite Building, Satara.
- 1B2. Savita Krishana Godse
Algur Wadi, Frensher Khadi, Taluka:
Phaltan, District: Satara.
- 1B3. Sandeep Shivaji Hetkale
- 1B4. Sachin Shivaji Hetkale
- 1B5. Satish Shivaji Hetkale
All residents of Raviwar Peth,
House No. 66, Lonar Gali,
Behind Gite Building, Satara.
2. Balabai Vishnu Nimbalkar
3. Sarsabai Ishwar Hetkale, deceased by heir
and legal representative
- 3.A. Shivaji Ishawar Hetkale,

Occupation of Nos. 1, 2 and 3 Agriculturist,
All residents of Raviwar Peth, Satara.

3A1. Nirmala Shivaji Hetkale

Raviwar Peth, House No. 66, Lonar Gali,
Behind Gite Building, Satara.

3A2. Savita Krishna Godse

Algur Wadi, Frensher Khadi, Taluka
Phaltan, district Satara.

3A3. Sandeep Shivaji Hetkale

3A4. Sachin Shivaji Hetkale

3A5. Satish Shivaji Hetkale

All residents of Raviwar Peth, House No.
66, Lonar Gali, Behind Gite Building,
Satara.

4. Shivaji Ishwar Hetkale

Occupation of Nos. 1, 2 and 3
Agriculturist, All residents of Raviwar Peth,
Satara.

4A. Nirmala Shivaji Hetkale,

Raviwar Peth, House No. 66, Lonar Gali,
Behind Gite Building, Satara.

4B. Savita Krishna Godse,

Algur Wadi, Frensher Khadi,
Taluka: Phaltan, District: Satara.

4C. Sandeep Shivaji Hetkale

4D. Sachin Shivaji Hetkale

4E. Satish Shivaji Hetkale

All residents of Raviwar Peth, House No. ... Appellants
66, Lonar Gali, Behind Gite Building, Satara.

Versus

Babai Laxman Chorge

(since deceased through legal heirs and
representatives:

(a) Smt. Lata Dilip Chorge

(b) Kishore Dilip Chorge

(c) Sankesh Dilip Chorge

(d) Smt. Sangita Kashinath Chorge

(e) Vishal Kashinath Chorge

(f) Mona Kashinath Chorge

(g) Ashok Laxman Chorge

(h) Surekha Gajanan Holkar

All residents of 60, Raviwar Peth, Budruk
Raveli, Taluka: Phaltan, District: Satara.

(i) Uma Ashutash Dhodmise

Residing at 909, Sadashiv Peth,
Near Brahmin Karyaalaya, Pune.

... Respondents

Ms. Aditi S. Naikware a/w. Mr. Pradeep Thorat a/w. Rushikesh S.
Kekane for Appellants.

Mr. Sharad Bhosale i/b. Mr. Dilip Bodake for Respondent.

CORAM : GAURI GODSE, J.

RESERVED ON : 17th APRIL 2025

PRONOUNCED ON : 13th AUGUST 2025

JUDGMENT :-

1. This appeal is preferred by the original defendants to challenge the concurrent judgments and decrees directing them to hand over possession of the suit property to the respondent-plaintiff. The second appeal was admitted on 14th June 1993 on the following substantial questions of law:

i. If Rama died prior to 1956 as is the admission of plaintiff in cross, whether defendants right of residence is protected under provision of section 23 of Hindu Succession Act.

ii. If he died after 1956 whether defendants can claim share in Ramas interest.

iii. Effect of Section 14 of Hindu Succession Act.

iv. Other incidental question.

2. The suit property is ancestral. The original holder was

Natha, who died leaving behind two sons, Rama and Chandar. The parties claim rights in respect of the suit property through Rama. In the partition between Rama and his brother, Chandar, the suit property was allotted to Rama. Rama had three daughters and three sons. Plaintiff is the widow of one of the sons, Laxman. Defendant Nos. 1 to 3 are the daughters of Rama, and defendant no.4 is the son of defendant no.3. The suit property is part of the property that was allotted to the share of Rama.

3. The plaintiff filed a suit seeking possession from the appellants. The plaintiff contended that after the demise of Rama in the year 1950, the property, including the suit properties, was jointly owned by the sons of Rama. The plaintiff further contended that there was a partition amongst the sons of Rama, namely Laxman, Dnyanoba and Tukaram, and the suit property came to the share of the plaintiff's husband, Laxman. She further contended that out of sympathy, Laxman had permitted the appellants to reside in the suit property. She contended that after the death of Laxman, she permitted them to reside in the suit

property. The plaintiff vide notice dated 1st August 1986 called upon the appellants to hand over possession of the suit property to the plaintiff. Since the appellants refused to hand over possession, she filed the suit seeking possession.

4. The defendants, i.e. the appellants, filed a common written statement and denied the suit claim. They contended that the suit property was originally an open land that was given by their father Rama towards their maintenance. They contended that the defendants constructed the structure on the open land out of their own income. They denied that there was any partition amongst the brothers. They further contended that even if there was a partition, the same would not be binding upon the defendants. According to the defendants, the defendant no.1 came to reside in the suit property after their father's demise, post 1956. Defendant no.2 came to reside in the suit property in the year 1949, and defendant no.3 came to reside in the suit premises after their father's demise prior to 1950, along with her son-defendant no.4. The defendants contended that defendant nos. 2 and 3 were widows and therefore came to reside along

with their father. Defendant no.1 was abandoned by her husband when she came to reside along with her father, and later on, even her husband expired. Hence, it is contended by the defendants that the land was given by their father towards their maintenance and out of their own income, they constructed the structure on the land allotted by their father. Hence, the plaintiff was not entitled to seek exclusive rights over the suit property and dispossess them.

5. The trial court held that the suit property belonged to the joint family of the plaintiff and the defendants were residing in the suit premises as gratuitous licensees. The trial court held that the plaintiff terminated the licence and thus was entitled to seek possession of the suit property. The appeal preferred by defendants was dismissed and the trial court decree was confirmed. Hence, the present second appeal by the defendants.

6. The submissions made by the learned counsel for the appellants are summarised as under:

a) Rama expired on 30th November 1950, before the Hindu

Succession Act, 1956, came into force ("the 1956 Act"). It is admitted by PW No. 1 in her cross-examination that defendant no. 2 came back to the house of her father, Rama, after the demise of her husband. Thus, admittedly, defendant no.2, who was a widow, has been occupying the suit property since the lifetime of her father, who had allotted it to her towards her maintenance.

- b) The partition between the brothers was effected by executing a memorandum in the year 1966. Thus, brother Laxman became entitled to his specific share in the joint family property only in the year 1966. Therefore, the question of the suit property being allotted to the defendants by the plaintiff's husband, Laxman, does not arise. The right of residence given to the defendants by their father during his lifetime has crystallised before 1956, and therefore the same cannot be affected by subsequent partition between the brothers in the year 1966.
- c) From the evidence on record, it is clear that defendant no.2 was allotted the suit property for residence by her

father, towards her right of maintenance. Defendant nos.1 and 3 were deserted by their husbands, and they also started residing with defendant no.2 in the suit property. The right of residence of the defendant no.2 has been protected in view of the provisions of Section 23 of the 1956 Act. As per the provisions of Section 23, a female heir who is unmarried or has been deserted or has separated from her husband or is a widow is entitled to the right of residence. The provisions of Section 23 of the 1956 Act are made applicable retrospectively, and therefore, even if Rama died before 1956, the right of residence of the defendants has crystallised and remained unaffected in view of the provisions of Section 23 of the 1956 Act.

- d) To support her submissions that the applicability of Section 23 cannot be confined only to the rights devolved only after the commencement of the 1956 Act, learned counsel for the appellants relied upon the decision of this court in the case of *Manohar slo Mukundrao Deshpande Vs Menkabai wd/o Mukundrao*¹.

¹ 1988 Mh.L.J. 1138

e) Admittedly, Rama expired in the year 1950, i.e. prior to the coming into force of the 1956 Act. The defendants had acquired their right to reside in the suit property from their father. The defendants continued to reside in the suit property after the coming into force of the 1956 Act. Prior to the 1956 Act, coming into force under the uncodified Hindu Law, the married daughters who were unprovided for were entitled to a share in their father's estate. It has come on record that the defendant no.2 was a widow and defendant nos. 1 and 3 were deserted by their husbands. In view of the provisions of Section 23, which applies retrospectively, the appellants were entitled to reside in the suit property, and the same would amount to the creation of a limited interest in the suit property. The possession and occupation of the appellants has been admitted, and therefore, even if Rama died before 1950, the same will not affect the limited interest created in favour of the appellants by virtue of provisions of Section 23 of the 1956 Act.

- f) Hence, in answer to the substantial question of law in the event it is held that Rama has expired after 1956, the defendants, being the daughters of Rama and being the Class-I heirs, would be entitled to an equal share in the suit property along with their brothers. Thus, in the event Rama had expired after 1956, the defendants would each get a 1/6th share in the suit property, which Rama admittedly owned.
- g) The scheme of Section 14 of the 1956 Act is to give full proprietary rights to Hindu women, where she got only limited rights by virtue of the uncodified Hindu Law. The scope of Section 14 is very wide, and the object of the said enactment was to convert the limited interest of a Hindu female, however, restricted, into her absolute estate. The provisions of Section 14 mention the right of a Hindu female, which will not include only a widow but will also include a daughter, whether married or unmarried. On perusal of the provisions of Section 14, it is clear that there is no particular manner in which the Hindu female is

required to acquire a limited interest in the property. It provides that the property may be acquired "by inheritance or devise, or at partition or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after the marriage, or be her own skill or exertion, or by purchase or by prescription, or in any manner whatsoever.

h) In the present case, admittedly, the appellants are occupying the suit property since prior to the 1956 Act, coming into force. The only dispute is regarding who has permitted the appellants to reside in the suit property. It is the case of the plaintiff that her husband, who is the brother of the appellants, had permitted them to occupy the suit property, whereas it is the case of the appellants that their father had permitted them. From the evidence on record, it is clear that defendant no.2 has started occupying the suit property during the lifetime of her father. The husband of the plaintiff became exclusively entitled to the suit property only in the year 1966, and admittedly, the

defendants are in possession prior to 1966; therefore, the question of the husband of the Plaintiff permitting the appellants does not arise.

- i) Once it is established that the appellants are in possession of the suit property since prior to 1956, the same would be sufficient to recognise their limited interest in the property in view of the provisions of Section 23 of the 1956 Act, and the fact whether the father expired prior to the 1956 Act, will be of no relevance. The limited interest created in favour of the appellants will blossom into absolute interest in view of the provisions of Section 14 of the 1956 Act. The only exception to the aforesaid proposition is provided under Section 14(2) of the 1956 Act, which provides that if by way of an instrument, interest is restricted, the same shall not in any manner be affected by provisions of sub-section (1) of Section 14 of the 1956 Act. However, it is not the case of the plaintiff that the rights created in favour of the appellants have been restricted by any instrument so as to attract the provisions of Section 14(2) of the 1956

Act.

j) Hence, the limited interest in the suit property created in favour of the defendants has blossomed into absolute ownership, and therefore, the plaintiff has no right to seek possession of the suit property on the ground that the appellants were only permitted to reside in the suit property by her husband. To support her submissions, learned counsel for the appellants relied upon the decision of the Hon'ble Apex Court in the case of *V Tulassam Vs Sessa Reddy*².

k) In support of the submissions, the learned counsel for the appellants relied upon the decision of the Madras High Court in the case of *Ambu Bai Ammal Vs Soni Bai Ammal*³. Learned counsel for the appellants submitted that the Madras High Court held that the wedded daughter is entitled to maintenance from her father's estate. Learned counsel for the appellants relied upon the decision of the Hon'ble Apex Court in the case of *Laxmappa and Ors Vs*

² AIR 1977 SC 1944

³ AIR 1940 Mad 804

Balawa Kom Tirkappa Chavdi⁴. She submitted that the Hon'ble Apex Court held that there is an obligation on the part of the father to maintain his destitute wedded daughter. On a similar proposition, learned counsel for the appellants relied upon the decision of the Punjab and Haryana High Court in the case of ***Ram Sarup Vs. Patto⁵***. She submitted that Punjab and Haryana High Court has held that during the lifetime of the father, it was his moral obligation to maintain the daughter and after his demise, the obligation matured onto a legal obligation on the persons inheriting the father's property. She submits that Punjab and Haryana High Court held that the said legal obligation would mature into absolute ownership.

- l) On a similar proposition regarding the right of maintenance from the father and the father's death upon the brothers, learned counsel for the appellants relied upon the decision of the full bench of the Andhra Pradesh High Court in the case of ***K. Varaprasada Rao Vs. K. Chinna***

4 (1996) 5 SCC 458
5 AIR 1981 (P & H) 68

*Venkaiah*⁶. Learned counsel for the appellants further relied upon the decision of this court in the case of *Yeshwant Maruti Lonkar Vs. Anjanabai Dinkar Dhamdhere*⁷. Lastly, learned counsel for the appellants relied upon the decision of the Gujarat High Court in the case of *Manjulaben Sarvaiya Vs. State of Gujarat*⁸. She submits that the Gujarat High Court held that the discussion about the rights of the married daughter and destitute daughter to be maintained from the property of the father would create an obligation on the persons inheriting the father's property.

m) Learned counsel for the appellants, therefore, submits that all three questions of law must be answered in favour of the defendants. Hence, the impugned decrees directing the appellants to hand over possession would not be sustainable as the appellants are entitled to reside in the suit property.

7. The submissions made by the learned counsel for the

6 1990 (2) APLJ 73

7 AIR 2013 Bom @ 1157

8 2016(2) GLR 948

respondents are summarised as under:

- a) In the written statement, the defendants contended that they constructed the house property out of their own income. Hence, they would not be entitled to seek any protection of maintenance on the ground that they were destitute daughters and therefore by way of maintenance, a land was allotted to them. Defendant no.3 came to reside in the suit property in the year 1956, i.e. after the date of the father's demise. Hence, there was no question of any allotment of land to defendant no.3, and they are constructing the house on the land allotted to them. Defendant nos. 2 and 3 claim to have constructed the house from the maintenance amount therefore, they cannot be termed as destitute. Hence, the legal principles relied upon by the learned counsel for the appellants on the moral obligation of the father and later by the brother would not apply to the facts of the present case.
- b) When the partition was effected between the three brothers, the defendants never objected and claimed their

rights in respect of the suit property. Thus, now the defendants were not entitled to raise any objection to the partition that had taken place. The house property was always in existence from the lifetime of Natha and the defendants never carried out any construction on the land. The defendants failed to prove that they carried out any construction on the land allotted to Laxman in the partition. Hence, the defendants were not entitled to retain possession of the suit property after the license was terminated by the plaintiff. The plaintiff rightly terminated the gratuitous license created by Laxman. Hence, the defendants were not entitled to retain possession of the suit property.

- c) The defendants were neither entitled to seek rights through their father nor were they entitled to seek rights of residence on the ground that their father, i.e. Rama, or the plaintiff's husband, Laxman, was under an obligation to provide residence to the defendants. He therefore submits that both the courts have rightly disbelieved that the

defendants' theory of right to residence and thus, correctly decreed the suit in favour of the plaintiff. He therefore submits that the impugned judgment and decree would not warrant any interference by this court.

Analysis and conclusions:

8. I have considered the submissions made on behalf of both parties. I have perused the records and proceedings of the second appeal. It is not in dispute that the suit property originally belonged to Natha. The plaintiff claims that partition took place on 5th January 1966, amongst the three sons of Natha and the suit property was allotted to Laxman's share. During the lifetime of Laxman, he never objected to the defendants' right to residence in the suit property. The suit for possession was filed by Laxman's widow on 2nd August 1986. The plaintiff contended that Laxman had permitted the defendants to reside in the suit premises as gratuitous licensees. However, it is not in dispute that defendant no.2 came to reside in the suit property during the life-time of Rama. The plaintiff admitted that defendant no.2 came to reside in the suit property during the lifetime of Rama.

Hence, there was no question of Laxman permitting defendant no.2 to reside in the suit property as a gratuitous licensee.

9. Defendant no.2 was a widow in 1949. Defendants nos. 1 and 3 were deserted by their husband, and later on, their husband expired. Defendant no.4 is son of defendant no.3 who was six months old when defendant nos. 3 and 4 came to reside in the suit property on 10th March 1956. Thus, the plaintiff's claim that the defendants were permitted to reside in the suit property by Laxman as gratuitous licensees is unbelievable. The calculation made by the first appellate court for concluding that considering the age of defendant no.4 on 10th March 1956, it was not believable that defendant no. 2 came to reside during the lifetime of Rama is not based on any pleading.

10. In any event, defendant no.2 admittedly came to reside during the lifetime of Rama, pre-1956. There is no clarity about the date of death of Rama. Therefore, the defendants' claim needs to be examined as per the prevailing law prior to 1956, and the rights of the defendants are also required to be examined as per the law existing post 1956.

11. In view of Section 23 of the 1956 Act, where a Hindu intestate left surviving him or her both male and female heirs, a female heir had a right of residence in the dwelling house. Section 23 is omitted with effect from 9th September 2005. Prior to its omission, Section 23 read as under;

"23. Special provision respecting dwelling-houses.—Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein: Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow."

12. Thus, after the 1956 Act, although a female heir did not have a right to claim partition in the dwelling house, until the male heirs chose to divide their respective shares, the female heir had the right to residence. In the decision of this court in the

case of ***Mukundrao Deshpande***, the question of law decided was whether the right to claim partition of a dwelling house, accrued in favour of a Hindu widow under sub-section (3) of Section 3 of the Hindu Women's Right to Property Act 1937 has been placed under suspension on coming into force of Section 23 of the 1956 Act. The question of seeking partition by a Hindu widow is not a question that arises in this appeal; hence, the legal principles settled in the said decision on the right of a Hindu widow would not apply to the facts of the present case. However, this Court, while deciding this question of law on the right of a Hindu widow, held that Section 14 has improved the right of a Hindu woman, which was acquired before or after the commencement of the 1956 Act. Thus, the view taken by this Court on the rights acquired under Section 14 of the 1956 Act would apply to the facts of the present case.

13. In the decision of ***V Tulassam***, the Hon'ble Apex Court held that sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude and any property possessed by a female Hindu, whether acquired before or after

the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. It is further held that the words “any property” would include both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, and also in lieu of maintenance.

14. In the case of *Laxmappa*, the Hon’ble Apex court held that the Hindu law provides that a Hindu father is bound to maintain his unmarried daughters, and on the death of the father, they are entitled to be maintained out of his estate and if the married daughter is unable to obtain maintenance from her husband, or, after his death, from his family, her father, if he has got separate property of his own, is under a moral, though not a legal, obligation to maintain her. It is further held that the father may not have had a legal obligation to maintain her, but all the same, there existed a moral obligation, and if in acknowledgement of that moral obligation the father had transferred property to his daughter, then it is an obligation well-fructified. It is thus held that a moral obligation, even though not enforceable under the law, would, by acknowledgement, bring it to the level of a legal

obligation, for it would be perfectly legitimate for the father to treat himself obliged out of love and affection to maintain his destitute daughter.

15. This court, in the case of *Yeshwant Marutilonkar*, followed the legal principles settled by the Hon'ble Apex Court in the case of *V. Tulassam* and in the case of *Laxmappa*, and held that a Hindu father is bound to maintain his married daughters, and on the death of the father they are entitled to be maintained out of his estate. It is further held that the father may not have had a legal obligation to maintain her, but, all the same, there existed a moral obligation, and if in acknowledgement of that moral obligation the father had transferred property to his daughter, then it is an obligation well-fructified. Thus, it is held that a moral obligation, even though not enforceable under the law, would, by acknowledgement, bring it to the level of a legal obligation.

16. In view of the legal principles settled in the aforesaid decisions, it is not necessary to discuss in detail the other decisions of various High Courts relied upon by the learned counsel for the appellants, which have taken a similar view, as

referred in the preceding paragraphs.

17. Thus, the legal principles applicable to the facts of the present case, on the daughter's rights under the Hindu law in the father's property can be summarised as follows:

- (a) The uncodified Hindu law provided that a Hindu father is bound to maintain his unmarried daughters, and on the death of the father, they are entitled to be maintained out of his estate and if the married daughter is unable to obtain maintenance from her husband, or, after his death, from his family, her father, if he has got separate property of his own, is under a moral, though not a legal, obligation to maintain her. A moral obligation, even though not enforceable under the law, would, by acknowledgement, bring it to the level of a legal obligation, for it would be perfectly legitimate for the father to treat himself obliged out of love and affection to maintain his destitute daughter. This obligation would also apply to the heirs of the father who inherited the father's property.

(b) Section 14 of the Hindu Succession Act 1956 has improved the right of a Hindu woman, which was acquired before or after the 1956 Act.

(c) In view of sub-section (1) of Section 14 of the 1956 Act, any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as the full owner thereof and not as a limited owner.

(d) The words “any property” in sub-section (1) of Section 14 of the 1956 Act would include both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, and also in lieu of maintenance.

(e) After the 1956 Act, in the property of a male Hindu dying intestate, the daughter classified as a Class I heir has a share.

(f) Under Section 23 of the 1956 Act, a female heir had no right to claim partition in a dwelling house till the male heirs

chose to divide the respective shares, but it gave the right of residence to a female heir in the dwelling house. Section 23 is omitted with effect from 9th September 2005.

18. Thus, it is a well-established legal principle that, pre-1956, unmarried daughters, widows or destitute daughters were entitled to be maintained by their father and reside in the father's property. Hence, in the present case, the right of the defendants to residence prior to 1956 would become an absolute right after the Act of 1956 came into force. So far as defendant nos. 1 and 3 are concerned, even if it is held that they came to reside in the suit property after Rama's death, they would be entitled to the right to residence in view of the moral obligation to be maintained by the heirs of the father who inherited the property.

19. Thus, irrespective of whether Rama died before or after 1956, the appellants, being daughters of Rama, had a right to his property. Before 1956, Rama or his heirs who inherited his property were bound to maintain the appellants, and on the death of Rama, they were entitled to be maintained out of his estate under a moral, though not a legal, obligation to maintain

them. After the 1956 Act, Section 14 has improved their right of maintenance acquired before the 1956 Act, which has culminated in an absolute right. In view of Section 23 of the 1956 Act, the appellants had the right of residence in the dwelling house. If Rama died after 1956, the appellants, being Class I heirs, were entitled to a share in Rama's property. Hence, under any contingency, the plaintiff is not entitled to seek possession from the appellants on the ground that they were gratuitous licensees and she terminated it. Hence, all the questions of law are answered accordingly in favour of the appellants.

20. Considering the well-established legal principles as discussed above, the appellants' right of residence needs to be protected. Thus, in view of the well-settled legal position as discussed in the above paragraphs, the impugned decrees would not be sustainable.

21. Hence, for the reasons recorded above, the second appeal is allowed by passing the following order:

- I) The impugned judgment and decree dated 13th October

1988, passed by the Joint Civil Judge Senior Division, Satara, in Regular Civil Suit No. 427 of 1986 and the judgment and decree dated 3rd March 1993, passed by the Additional District Judge, Satara, in Regular Civil Suit No. 435 of 1988, are quashed and set aside.

II) Regular Civil Suit No. 427 of 1986 is dismissed.

22. The Second Appeal is allowed in the aforesaid terms with no order as to cost.

(GAURI GODSE, J.)