

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9226 OF 2013
(Arising out of SLP(C) No.19444/2012)

MANGUBEN RAJABHAI BAMBHANIA

Appellant(s)

:VERSUS:

MACHHAGANBHAI RAJABHAI BAMBHANIA & ORS.

Respondent(s)

O R D E R

Heard Mr. Ritin Rai, learned counsel in support of this special leave petition and Mr. D.N. Ray, learned counsel appearing for the respondents.

2. Delay condoned. Leave granted.

3. This appeal seeks to challenge the order dated 3.2.2011 passed by a learned Single Judge of the Gujarat High Court whereby the Special Civil Application No.9031 of 2010 filed by the appellant

herein was dismissed. The appellant had sought to challenge the order dated 19.7.2010 passed by the 6th Additional Senior Civil Judge, Bhavnagar, below Exhibit 73 in Regular Civil Case No.701 of 2004. The appellant had sought her share in the family property by filing a suit for partition. Initially the appellant sought her share in the property of her father. Respondents are her brothers. Subsequently, she sought to amend the plaint by filing an application for including the property of her deceased brother Ratibhai Rajabhai. The property sought to be included was Plot No.1401 Ghogha Road, Bhavnagar. The learned Trial Judge rejected that application and so also the learned Single Judge of the High Court.

4. Learned counsel appearing for the appellant submits that in any case, the partition has not taken place and as far as the share of her deceased brother Ratibhai Rajabhai is concerned, the appellant as well as the respondents would have their shares in that and it is better that their shares are decided by the Trial Court.

5. Mr. D.N. Ray, learned counsel appearing for the respondents on the other hand, submits that the appellant ought to have filed a better application and the share in the brother's property ought to have been sought at the outset. In our view, the property of the deceased brother of the appellant is one wherein the appellant would have a share and it is desirable that the said aspect is also decided in the pending suit. In the circumstances, we allow this appeal and set aside the order dated 3.2.2011 passed by the learned Single Judge of the High Court as well as the order dated 19.7.2010 passed by the Trial Court. The Application for amendment Exhibit 73 will stand allowed.

6. The appellant will amend the plaint within four weeks from today to include the above referred property at Bhavnagar. The respondents will be at liberty to file their written statement within four weeks thereafter. All contentions with respect to the nature and share in the added property will be available to both the parties at the time of trial. Inasmuch as this is a suit filed in the year 2004,

we request the concerned Court to hear and decide
the same at the earliest.

.....J
(H.L. GOKHALE)

.....J
(J. CHELAMESWAR)

New Delhi;
October 08, 2013.



JUDGMENT