

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.200 OF 2023

WITH

INTERIM APPLICATION (ST) NO.7400 OF 2023

IN

SECOND APPEAL NO.200 OF 2023

Indubai alias Vilaskorbai
Pandit Deore & Ors.

...Appellants/
Applicants

V/s.

Keda Kautik Deore & Ors.

...Respondents

Mr. Sunil Gosavi a/w Mitesh Varshney, for the
Appellants/Applicants.

Mr. Tejesh Dande a/w Vikrant Khare, Pratik Sabrad,
Seema Patil i/b Vikrant Khare, for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.
DATE : 14th MARCH, 2023

P.C.:

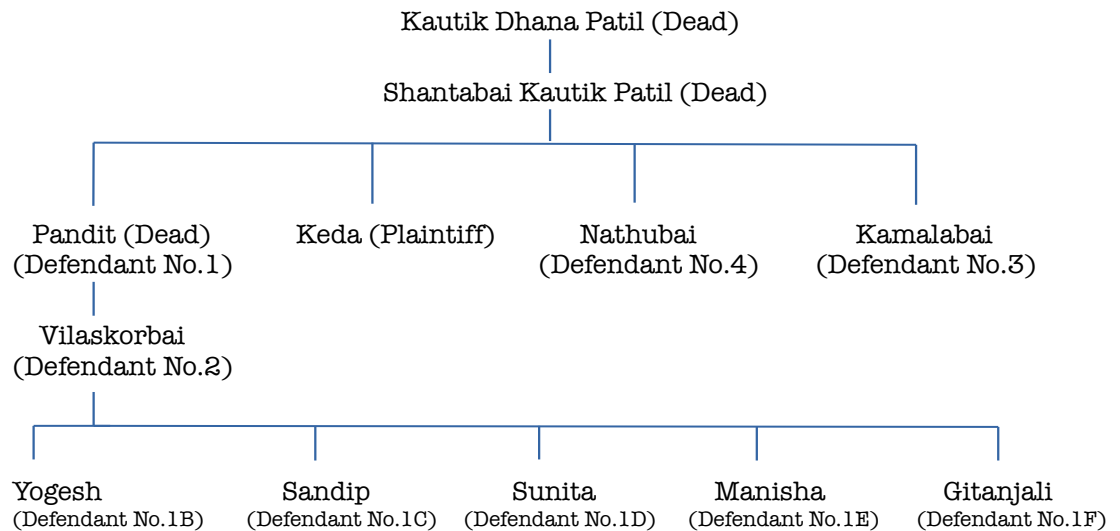
1. Heard Mr. Gosavi, learned counsel appearing for the
Appellants and Mr. Dande, learned counsel appearing for the
Respondent No.1.

2. By the present Second Appeal, the Appellants i.e.
original Defendants are challenging the legality and validity
of the judgment and decree dated 28th January, 2019 passed
by the learned Joint Civil Judge, Junior Division, Satana,

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District-Nashik in Regular Civil Suit No.106 of 2007 as well as the judgment and decree dated 16th July, 2022 passed by the learned District Judge-4, Malegaon, District-Nashik in Regular Civil Appeal No.17 of 2019 and Regular Civil Appeal No.64 of 2019.

3. The Appellants are the original Defendant Nos.1-A to 1-F. The genealogy of the aforesaid parties is as follows :



4. The suit properties are extensive and described in paragraph No.2 of the Judgment of the learned Trial Court. However, the present Appellants are challenging the judgment and decree of both the learned Courts only with respect to the properties at Gat No.192 and Gat No.421-B.

5. It is the contention of the Appellants that, the property at Gat No.192 was allotted to the original Defendant No.1-

Pandit Kautik Patil by Kautik D. Patil i.e. father of the Pandit and grandfather of the present Appellants. According to the Appellants, out of income of the said Gat No.192, Gat No.421-B was purchased and, therefore, the said Gat No.421-B is self acquired property of Pandit i.e. father of the present Appellants.

6. Thus, Mr. Gosavi, learned counsel appearing for the Appellants at the outset have fairly stated that, the Appeal is confined only with respect to Gat No.192 which is admittedly the ancestral property. However, it is the claim of the Appellants that, it was allotted by grandfather to their father in partition and the said Gat No.421-B was purchased out of the income of said Gat No.192 and, therefore, it is the self acquired property of said Padit. For proving the contention that, Gat No.192 is allotted by Kautik D. Patil in favour of Pandit, learned counsel appearing for the Appellants has very heavily relied on Mutation Entry No.1562 with respect to Gat No.192. It is the contention of the Appellants that, there is partition deed dated 8th February, 1970 and, according to the partition deed, the said Gat No.192 was allotted to Deceased Defendant No.1-Pandit.

7. It is admitted position that, the said partition deed or any other partition deed is not produced on record by the Appellants. The said Mutation Entry No.1562 on which the Appellants have heavily relied reads as under :

हक्काचे पत्रक

मौजे — वनोली

ता. — बागलाण

नों नं.	हक्काचा प्रकार	फेरफार झालेले सर्वे नंबर व पोट हिस्से	तपासणी अंमलदाराची सही किंवा शेरा
१५६२	तारिख — १४/२/७० बाजुस दिलेला स. नं. हा कौतिक धना देवरे यांनी त्याचा मुलगा पंडीत कौतिक देवरे याचे नावे आज रोजी करून दिला ८/२/७० चे लेखी अर्जावरील नोंद केली. सही xxx तलाठी	१०३ ए एक फक्त	नोटीस रूजू मंजुर सही xxx म. नि. ता.२८/९/१९७०

8. A perusal of the said Mutation Entry shows that, Kautik D. Patil transferred the property in favour of his son Pandit and, there is no partition deed. Perusal of the said Mutation Entry does not indicate that any partition deed was executed. Admittedly, the Appellants failed to produce on record any such partition deed. Thus, the Appellants have failed to prove that, the said Gat No.192 has been allotted in favour of Pandit in partition.

9. The learned Trial Court as well as the learned First Appellate Court have concurrently held that, the said Gat No.192 is the joint family property. The learned Appellate

Court has given various reasons to come to such conclusion. The reasons given by the learned First Appellate Court are reflected in paragraph Nos.26 & 30 to 34. The said paragraphs read as under :

“26. **Defendant no.3** a sister of plaintiff in her written statement as well as examination-in-chief admitted that Gat no.192 is their joint Hindu family property. The defendant no.1B a son of deceased defendant no.1 also admitted during his cross-examination that suit property is ancestral family property. Defendant no.4 has also admitted that suit properties are joint Hindu family properties by filing pursis.

30. In the case in hand **defendant no.1B** deposed that on 8.2.70 his grand-father Kautik Dhana allotted Gat no.192 in partition to his father deceased defendant no.1. Therefore, Gat no.192 is absolute property of deceased defendant no.1. However, the said testimony of defendant no.1B is not credit-worthy, **because at the time of so-called partition dt. 8.2.70 the defendant no.1B was not born.** So the evidence of defendant no.1B is hearsay and not admissible one.

31. Defendant no.3 deposed that in the year 1970 her father Kautik Dhana in partition allotted Gat no.192 to his brother deceased defendant no.1. However, her said testimony is also not credit-

worthy, because at the time of deposing before court her age was 55 years. It means at the time of so called partition in the year 1970 she was 7 years old.

32. Exh.101 is a mutation entry no.1542 dt. 14.2.70 with respect to Gat no.192 (old Survey no.103) whereby the name of deceased defendant no.1 mutated with respect to Gat no.192. In mutation entry at Exh.101 nowhere it is mentioned that the father of deceased defendant no.1 allotted Gat no.192 in partition to defendant no. As per mutation entry at Exh.101 only the name of defendant no.1 was mutated in the 7/12 extract with respect to Gat no.192 in the year 1970. Defendant no.1B to 1F and defendant no.3 failed to prove that Gat no.192 was allotted in partition to deceased defendant no.1 by his father in partition on 8.2.70.

33. The mutation entry at Exh.101 shows that only the name of defendant no.1 is mutated with respect to 7/12 extract of Gat no.192. On the point of mutation entries, the Hon'ble Supreme Court in the case of *Smt. Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company & Ors.* 2019(3) ALL MR 975 held that, "mutation of a land in revenue records does not create or extinguish title over such land nor it has any presumptive value on title. It only enables person in whose favour mutation is ordered to pay land

revenue in question.” The Hon’ble Bombay High Court in the case of *Dada Bhagwan Shinde Vs. Tulsabai 2008(5) ALL MR 776* held that, “mutation in record of rights does not create any right, title or interest, however, it has presumptive value. A person not accepting mutation entry has to rebut presumption.” In the case of *H. Lakshmaiah Reddy & Ors. Vs. L. Venkatesh Reddy, 2015(4) MLJ 99*, the facts were that A and B were Class-I heirs. The name of A was mutated in the revenue record on the basis of oral statement made by B before revenue authority. The Hon’ble Supreme Court held that, merely on the basis of statement of B who is a Class-I heir his share in the property cannot be relinquished.

34. In view of law laid down by Hon’ble Supreme Court, the mere mutation entry in the name of deceased defendant no.1 with respect to Gat no.192 does not thereby right in favour of deceased defendant no.1 either create or extinguish the rights of plaintiff, defendant nos.3 & 4 from Gat no.192. Defendant no.1B to 1F and defendant no.3 failed to prove that Gat no.192 allotted to defendant no.1 by his father in partition in the year 1970. On the contrary, the evidence on record proves that Gat no.192 is joint Hindu family property of plaintiff, defendant nos.1, 3 & 4.”

(Emphasis added)

10. Thus, by appreciating the evidence on record and the legal position, the learned First Appellate Court has confirmed the finding of the learned Trial Court that the said property bearing Gat No.192 is the joint family property and not allotted exclusively to said Pandit in partition. Thus, concurrent finding is recorded that, Gat No.192 is a joint family property and available for partition.

11. As far as the claim regarding Gat No.421-B is concerned, it is the claim of the Appellants that, the said Gat No.421-B was purchased from the income of the Gat No.192. As the Gat No.192 is the joint family property, the Gat No.421-B is also joint family property.

12. Both the learned Courts have recorded concurrent finding that, both these properties are joint family properties and there is no substance in the substantial questions of law involved in this Second Appeal.

13. It is the Contention of Mr. Gosavi, learned counsel appearing for the Appellants that, for the first time, claim regarding these properties was made in 2001 by sending notice dated 19th November, 2001 and these properties were included in the suit by amendment in 2018 and, therefore,

the suit filed as far as for these properties are concerned is barred by limitation. It is admitted position that, the suit was filed on 12th November, 2007. Once the amendment is allowed it relates back to filing of the date of the suit, except, if it is expressly provided that limitation will start from the date of amendment.

14. Mr. Gosavi, learned counsel has failed to point out anything and to show that while granting amendment, the learned Trial Court has passed any such order. Apart from that the limitation as per Section 110 of the Limitation Act, 1963 is twelve years for filing the suit by a person excluded from a joint family property to enforce a right to share therein. The said period of limitation is to start when the exclusion becomes known to the Plaintiff. The said aspect is also elaborately discussed by the learned Appellate Court in paragraph No.56, which reads as under :

“56.PW1 Kautik stated that on 3.8.07 he demanded his share in the suit property, but defendant no.1 avoided to give it. So on 3.9.07 he issued notice to defendant no.1, but share was not given to him. Therefore, he instituted suit for partition. No doubt, during cross-examination PW1 Kautik admitted that he came to know that

name of defendant no.1 is mutated with respect to one of suit property bearing Gat no.192 in the year 2001. That doesn't mean that in 2001 plaintiff's share was excluded by defendant no.1. Even assuming that in the year 2001 the share of plaintiff was excluded by defendant no.1, still the period of limitation began to run in the year 2001 and suit was required to be filed within 12 years from thereof. The suit is filed in the year 2007."

15. Thus, both the Courts have concurrently held that, the suit is filed within limitation. Therefore, there is no substance in the contention raised by the Appellants.

16. The Second Appeal is dismissed in above terms with no order as to costs.

17. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]