



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**905 SECOND APPEAL NO. 370 OF 2026
WITH
CIVIL APPLICATION NO. 6107 OF 2026 IN SA/370/2026**

Veerbhadra Madhavrao Sakhare And Others

VERSUS

Shobhbai Suresh Gadpe and Others

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Mr. N.D. Kendre, Advocate h/f Mr. D.Y. Nandedkar, Advocate for the Appellants

Ms. S.G. Chinchokar, Advocate h/f Mr. G.N. Chincholkar, Advocate Respondent No.1

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 31 JULY, 2026

PER COURT :

1. Heard learned counsel Mr. Kendre holding for learned counsel Mr. Nandedkar for the appellants and learned counsel Ms. S.G. Chincholkar holding for learned counsel Mr. G.N. Chincholkar for respondent No.1.

2 By this Second Appeal, the appellants (original defendants Nos.1 to 4) have assailed the judgment and decree dated 02.05.2022 passed by the learned Joint Civil Judge, Junior Division, Biloli in Regular Civil Suit No.48 of 2015 as well as the judgment and decree dated 14.02.2026 passed by the learned District Judge-1, Biloli in Regular Civil Appeal No.32 of 2022, whereby the judgment and decree passed by the Trial Court came to be confirmed.

3. Respondent No.1 (original plaintiff) instituted Regular Civil Suit No.48 of 2015 seeking partition, separate possession and mesne profits in respect of the suit properties. The present appellants, who are the original defendants Nos.1 to 4, resisted the suit by filing their written statement. It was their specific defence that the plaintiff had orally relinquished her share in the suit properties after accepting an amount of Rs.5,00,000/- towards the marriage of her daughter and, therefore, she was not entitled to claim partition and separate possession. According to the appellants, the oral relinquishment was acted upon and the mutation entries were accordingly effected in the revenue record.

4. Upon appreciation of the oral and documentary evidence, the learned Trial Court decreed the suit in favour of the plaintiff. Being aggrieved thereby, the appellants preferred Regular Civil Appeal No.32 of 2022. The learned First Appellate Court, after independently re-appreciating the entire evidence on record, dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Hence, the present Second Appeal.

5. Learned counsel Mr. Kendre holding for learned counsel Mr. Nandedkar for the appellants submits that both the Courts below have committed a serious error in rejecting the defence of the appellants solely on the ground that there was no written deed of relinquishment. He submits that the plaintiff had orally relinquished her share in the suit properties after

accepting an amount of Rs.5,00,000/- towards the marriage expenses of her daughter and, therefore, she ceased to have any right in the suit properties. According to him, the mutation entries were also effected in the revenue record pursuant to such oral relinquishment.

6. Learned counsel further submits that both the Courts below have failed to appreciate the provisions of Section 9 of the Transfer of Property Act, 1882, which permits transfer of property otherwise than by a written instrument unless a writing is specifically required by law. He submits that the findings recorded by both the Courts below that, in the absence of a written deed of relinquishment, the defence of the appellants cannot be accepted, are contrary to the settled legal position. In support of his submissions, he has placed reliance upon the decisions in *Hirabai W/o Harji Ingale Vs. Babu Manika Ingale, 1980 Mh.L.J. 494*, *Gangadhar Pandhari Harde Vs. Uttam S/o. Pandhari Harde and Another, 2008 (2) Mh.L.J.*, and *Ramdas Chimna Vs. Pralhad Deorao, 1964 Mh.L.J.*

7. Learned counsel further submits that Gat No.167 was the absolute property of the mother and had become her absolute property by virtue of Section 14 of the Hindu Succession Act, 1956. However, both the Courts below failed to appreciate the said aspect while deciding the suit. He further submits that partition had already taken place and the mutation entries recording the same remained unchallenged. Therefore, according to him, the suit itself was not maintainable. Learned counsel for the appellants,

therefore, submits that the following substantial questions of law arise for consideration:

I. Whether the learned District Judge, Biloli, Dist. Nanded failed to appreciate the provisions under Section 9 of Transfer of Property Act?

II. Whether the learned First Appellate Court has committed a substantial error of law in confirming the finding of the Trial Court that land Gat No.167 is a joint family/ancestral property, when the admitted documentary evidence on record establishes that it was purchased by Rukhminibai out of her own Stridhan and was her absolute property under Section 14 of the Hindu Succession Act, 1956?

III. Whether Section 9 of the Transfer of Property Act, 1882, which permits transfer of immovable property by oral agreement in the absence of a statutory requirement of writing, applies to an oral relinquishment of a share in coparcenary/joint family property, and if so, whether the oral relinquishment by Respondent No.1 accompanied by acceptance of Rs.5,00,000/- in cash before Panchas on 01.05.2013 constitutes a legally valid and binding relinquishment?

IV. Whether the learned First Appellate Court has committed a legal error in not independently re-appreciating the evidence on record as required under Section 96 read with Order XLI Rule 31 of the Code of Civil Procedure, and whether such failure to record independent findings on each issue amounts to a jurisdictional error justifying interference by this Hon'ble Court in Second Appeal?

V. When the partition of joint family property was already effected during the lifetime of the father and mutation entries are also sanctioned, which were not challenged by the plaintiff during the lifetime of the father, whether the suit for partition itself is maintainable in view of the recent judgments of the Hon'ble Supreme Court and this Court?

8. Per contra, learned counsel Ms. S.G. Chincholkar holding for learned counsel Mr. G.N. Chincholkar for respondent No.1 supports the impugned judgments. She submits that both the Courts below have, upon proper appreciation of the oral as well as documentary evidence, concurrently held that the appellants have failed to establish the alleged oral relinquishment.

She further submits that the plaintiff has consistently denied having relinquished her share in the suit properties and both the Courts below have rightly rejected the defence raised by the appellants. According to her, the impugned judgments are based on concurrent findings of fact and no substantial question of law arises for consideration in the present Second Appeal.

9. I have considered the submissions advanced by the learned counsel for the respective parties. I have also gone through the pleadings, the oral and documentary evidence on record and the judgments passed by both the Courts below.

10. There is no dispute regarding the relationship between the parties. The principal defence of the appellants is that the plaintiff had orally relinquished her share in the suit properties after accepting an amount of Rs.5,00,000/- towards the marriage expenses of her daughter.

11. The plaintiff has, however, specifically pleaded that there was no oral relinquishment and that, being a coparcener, she is entitled to claim her share in the suit properties. It is not in dispute that, by virtue of the amendment to Section 6 of the Hindu Succession Act, 1956 brought into force in the year 2005, the plaintiff acquired the status of a coparcener with rights equal to that of a son. The plaintiff has consistently denied having executed oral relinquishment. Both the Courts

below, upon appreciation of the oral as well as documentary evidence, have concurrently recorded a finding that the appellants have failed to establish the alleged oral relinquishment. I do not find any perversity or legal infirmity in the said concurrent finding.

12. In my considered view, the contention advanced on behalf of the appellants cannot be accepted. Even assuming that an oral relinquishment is legally permissible under Section 9 of the Transfer of Property Act, 1882, as canvassed by the learned counsel for the appellants, the appellants were still required to establish, by cogent and convincing evidence, that the plaintiff had, in fact, relinquished her share in the suit properties. The judgments relied upon by the learned counsel for the appellants lay down the legal position regarding oral relinquishment; however, they do not advance the case of the appellants in the facts of the present case, as both the Courts below have concurrently held that the appellants failed to prove the alleged oral relinquishment. Consequently, the defence based upon the alleged oral relinquishment has been rightly rejected.

13. The contention regarding Gat No.167 being the absolute property of the mother also does not merit acceptance. Both the Courts below have considered the oral as well as documentary evidence while recording their findings. Likewise, the contention that the learned First Appellate Court failed to independently appreciate the evidence also cannot be accepted. A perusal of the impugned judgment demonstrates that the learned First

Appellate Court has independently re-appreciated the entire evidence on record and assigned cogent reasons while affirming the judgment and decree passed by the Trial Court. Thus, the requirements of Order XLI Rule 31 of the Code of Civil Procedure stand duly complied with.

14. For the reasons recorded hereinabove, I am of the considered opinion that the findings recorded by both the Courts below are based upon proper appreciation of the evidence on record and do not suffer from any perversity or legal infirmity warranting interference in exercise of jurisdiction under Section 100 of the Code of Civil Procedure. The appellants have failed to demonstrate that any substantial question of law arises for consideration in the present Second Appeal. Hence, the Second Appeal deserves to be dismissed at the admission stage. Hence the following order.

ORDER

- (i) The Second Appeal stands dismissed. No order as to costs.
- (ii) Pending Civil Application, if any, also stands disposed of.

[SIDDHESHWAR S. THOMBRE]
JUDGE