

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 783 OF 2013

Ashrubha Ramchandra Khetre, Aged 72 years, Occ. **Appellant**
Agriculture, R/o. Mothiwadi, Taluka Majalgaon,
District Beed

V E R S U S

1] Madhav Ramchandra Khetre, Aged 66 years, Occ. **Respondents**
Agri., R/o Mohiwadi, now Near Radha Talkies,
Mondha, Majalgaon, Taluka Majalgaon, District
Beed

2] Ramkavar @ Sumanbai w/o Madhav Khetre, Aged 60
years, Occupation HH Resident of as above

Mr. V.V. Bhavthankar, Advocate for the appellant
Mr. S.J. Salunke, Advocate for respondent nos.1 & 2

CORAM : A. V. NIRGUDE, J.

DATE : 30th JULY, 2015

PER COURT :

1. This Second Appeal challenges judgment and order passed by the lower Appellate Court not only dismissing the appellant's suit but decreeing the counter-claim of the respondents/defendants.

2. ***Facts leading to this litigation are as under:-***

One Ramchandra was father of the parties. He had three sons; appellant Ashrubha, Pralhad and respondent no.1 Madhav. It is an admitted fact that

during the life of Ramchandra, in 1975, the ancestral property, which comprise of about 10 Acre land, was divided against four co-partners, though admittedly mutation did not take place. It is also admitted that during old age, Ramchandra stayed with appellant Ashruba, and Ashruba sold three pieces of land in 1984 to 1986 to various persons. The total area, which they sold, came to 5 Acres 20 Gunthas. In 1994, Pralhad's children also sold their share to a third party. In 1993, Ramchandra died, and thereafter, respondent Madhav requested appellant-Ashruba that the remaining piece of land should stand mutated in his name, because apparently he did not sale his share in the ancestral property. The mutation was effected, and soon thereafter, in 1997, this litigation started.

3. The appellant Ashruba came with a case that the remaining piece of land, which was standing in the name of Madhav, belonged to him, and that his consent was fraudulently obtained for mutation etc. To this, respondent-Madhav asserted that while Ramchandra was stayed with Ashruba, both of them sold away their share. With this explanation, the suit deserved to be dismissed and counter-claim deserved to be decreed. The appellant however did not stop at that. He examined witnesses, who stated that in 1986, when they purchased lands from Ramchandra and Ashruba, it was the share of Madhav. These witnesses were rightly disbelieved by the learned Judge of the lower

Appellate Court. The appeal does not really have any substantial question of law. The appeal deserves to be dismissed. In view of above, appeal stands dismissed.

In view of dismissed of the Second Appeal, Civil Application No.14143 of 2013 stands disposed of.

(**A.V. NIRGUDE, J.**)

SRM/30/7/15