

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.394 OF 1992

Bhauso Pandurang Gaikwad
(since deceased by his heirs)

1. Smt. Housabai Bhauso Gaikwad
age 55
2. Chandrakant Bhauso Gaikwad
Age 35
both above are residing at House
No.385, 'E' Ward, Patil Galli,
Kasaba Bawada, Kolhapur
3. Sunita Sangram Jadhav
Residing at Timber Market,
Rajaram Chouk, Kolhapur

.. Appellants.

V/s

Govind Pandurang Gaikwad
(since deceased by his heirs)

1. Laxmibai Govind Gaikwad
Res. At 390E Ward, Ambe Galli
Kasba Bawada, Kolhapur,
2. Parvati Pandurang Ulape
Res. At Ulape Galli Kasba Bawada
Kolhapur.
3. Sanjjakabai Mahadeo Chougule
Res. At Haladi, Tal. Karveer,

Dist. Kolhapur

4. Anjana Shankar Patil
A/P Yalawade Tal. Radhanagri,
Dist. Kolhapur.

5. Mangal Balaso Thamekar
A/P Piyachiwadi, Tal. Karveer.
Dist. Kolhapur.

Mr. Kumar V. Saste, for appellants.

Coram : Smt. R.P SondurBaldota, J.

Date : 27th February, 2015

P.C.

1) This Second Appeal is directed against the judgment and order dated 09th January, 1992 by which District Court, Kolhapur allowed Regular Civil Appeal No.272 of 1987, set side the order of the Trial Court dismissing the suit and decreed the suit for partition.

2) The suit property belonged to one Hari Laxman Kasote, maternal uncle of the original parties to suit. He died leaving behind his sister Dhondubai as the only heir. About five years prior to the suit Dhondubai died leaving behind Govind (the original plaintiff) and Bhauso (the original defendant) as her heirs. Govind filed Regular

Civil Suit No.139 of 1982 against Bhauso for partition of the suit property. Bhauso contested the suit alleging that Hari Laxman Kasote had, during his lifetime, gifted the suit property to him. On the basis of which gift, he had already got revenue record mutated in his name. During pendency of the proceedings Bhauso and Govind expired. The appellants are the heirs of Bhauso and the respondents are the heirs of Govind.

3) During the trial Bhauso did not produce the document of Gift. Admittedly the deed of gift is not registered as required u/s 17 of the Indian Registration Act. Despite recording these facts the Trial Court dismissed the suit solely on the ground that the revenue records in respect of the suit property stood mutated in the name of Bhauso.

4) Being aggrieved by the order of the Trial Court, Govind filed Regular Civil Appeal No.272 of 1987 to the District Court, Kolhapur. For allowing the appeal, the District Court not only noted the undisputed facts that the deed of gift was not registered and was not produced in the evidence, but found that the mutation entries in respect of the suit property were effected fraudulently. The relevant observations at para-9 of the impugned judgment read as follows :

“The extract of mutation entry No.4889 of Exh.58 clearly shows that the defendant had given false information to the revenue officer for entering his name to the suit property A on 29.6.60 that deceased Ghari Kasote had no legal heir except him. It is clear from the facts on record that the mother of the defendant was alive on 25.6.1960 and she was legal heir of deceased Hari Kasote after the death of deceased Hari Kasote. Thus, the name of the defendant, is entered for the suit property 'A' as owner on the basis of false and wrong information given by the defendant himself. The extract of property given by the defendant himself. The extract of property register card at Exh.43 to 49 for the suit property 'B' filed by the plaintiff also disclose that the name of the defendant was entered to the suit property B on 21.9.64, 9 years after the death of deceased Hari Kasute as his heir only. There is not a single word in the extract of mutation entry No.4889 at Exh 58 and the extract from property register card at Exh. 43 to 49 showing that the name of the defendant is entered to the suit properties 'A & B' on the basis of gift deed only as alleged by the defendant. Thus the documentary evidence on record has falsified the claim of the

defendant that he became the owner of the suit properties A and B as the deceased Hari Kasote gifted him the same by executing the gift deed.”

5) The present appeal was admitted on 03rd August, 1992 for consideration of grounds (a) and (c) of the memo of appeal as the substantial questions of law. The two grounds read as follows :-

A) The Lower Appellate Court committed substantial error of law in holding that the Respondent/Plaintiff proves that he has $\frac{1}{2}$ notified share in suit properties A and B.

C) The Lower Appellate Court committed substantial error of law in holding that the Respondent-Plaintiff is entitled for partition and possession of the suit properties at Exhibits A and B.

6) Bare reading of the grounds is enough to know that the questions raises therein are questions of fact and not questions of law. Beside, it is well established position in law that property can be transferred by way of gift only by a document in writing which is duly registered. The Trial Court was, therefore, clearly in error in holding that Bhauso was the owner of the suit property as the same was gifted to him by Hari Kasote. This error has been rightly

corrected by the impugned order. Therefore, there is no merit in the appeal. The same is accordingly dismissed.

(Smt. R.P. SondurBaldota, J.)