

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.276 OF 1993

- 1] Janardhan Raghu Pawar,
Age 48 years, Occupation Service as
Police Constable, R/o Malegaon,
presently attached to Pandharpur
Town Police Station.
- 2] Sheshabai w/o Nagu Mahajan,
Age 60 years, Household work,
C/o Balwadi, Taluka Baramati,
District Pune.
- 3] Parubai w/o Dnyandeo Londhe,
Age 55 years, Household work,
Residing at Malingare, Gat No.2,
Taluka Malshiras, District Solapur.
(Ori. Plaintiff & Defendant No.5 & 6). **APPELLANTS**

...V E R S U S...

- 1] Rajaram Raghu Pawar,
Age 33 years.
- 2] Bapu Rajaram Pawar,
Age 33 years.
- 3] Shrimant Rajram Pawar,
Age 13 minor through his guardian,
natural mother Shantabai Rajaram Pawar,
Age 48 years.
- 4] Pandurang Rajaram Pawar,
Age 10 years, Minor through his
guardian mother Shantabai w/o Rajaram
Pawar, Occupation Nos.1 and 2,
Agriculturists, All R/o Malegaon,
Taluka Madha, District Solapur.
(Ori. Defendants No.1 to 4). **RESPONDENTS**

Shri R.M. Agrawal, Advocate for Appellants.
Shri Rupesh Bobade, Advocate for Respondents.

CORAM: R.K. DESHPANDE, J.
DATE: 24th JULY, 2015.

ORAL JUDGMENT

1] In Regular Civil Suit No.85 of 1985, the trial Court passed a decree for partition and separate possession in respect of suit properties. The plaintiff is held entitled to 5/12th share in the suit properties. The defendants are also granted share in the property. The trial Court passed a decree on 30th June 1990 which was the subject-matter of challenge in Civil Appeal No.412 of 1990. The Lower Appellate Court modified the decree passed by the trial Court and by excluding Block No.7 from partition by its judgment and order dated 16th July 1992 rest of the decree is maintained. The plaintiff is therefore, before this Court in this second appeal.

2] The question involved before the Courts below was whether Block No.7 was the self-acquired property of the defendant No.1. The trial Court held that it was a joint family property whereas the Lower Appellate Court has held that it was a self-acquired property of the defendant No.1. In the light of such findings on 06.07.1993, this Court framed the substantial questions of law as are stated in the ground

No.(c) to (f) which are reproduced below:

[c] That the substantial question of law would be whether in view of the finding that there was no partition of land allotted to a member of joint family by Government by way of grant, could be said to be a separate property of such a member, namely Defendant No.1.

[d] That the substantial question of law would be when admittedly no separate nucleus was established by the defendant NO.1 and when the nucleus of the Joint Family was in existence and that too in the hands of Defendant No.1, the substantial question of law would be that even in these circumstances the acquisition of Gat No. 7/2 by Government grant merely because it is granted in the name of defendant No. 1, could be said to be the separate property.

[e] That the substantial question of law would be when Defendant No. 1 is hardly any party as about Gat No. 7/2 being his separate property whether the Appellate Court was right in holding so on the ground that there were no specific pleading by the Plaintiff as to how it was acquired by the family.

[f] That the substantial question of law would be when the family continues to be joint till filing of the suit in 1985, any property acquired by a member of joint family and enjoined by members of joint family and that too with the funds of the joint family could be allowed to be treated as separate property of any such member.

3] The defendant had raised a defence that there was already a partition in respect of the joint family properties. Both the Courts have rejected this plea and it is held that there was no partition effected. There is no grievance by any of the parties in respect of the decree for

partition of the suit properties other than Block No.7.

3] One Raghu the father of the plaintiff and the defendant, was holding ancestral property. The Block No.7 in question was granted by the State Government in the year 1960 in favour of the defendant No.1. At that time, the father and other members of joint family were alive. The other joint family properties of which the partition is directed to be effected, was standing in the name of Raghu, the father of the plaintiff and the defendants. Apparently, the defendant No.1 was not having any land in his name. The Lower Appellate Court has held in para 9 that the plaintiff has not pleaded in the plaint that the land Block No.7/2 is the government land. The document of grant is not placed on record but the 7/12 extract in respect of it is produced on record. It is in the name of the defendant No.1. The Appellate Court has held that there is no evidence on record to show that the payment for grant of such land was made out of the funds of the joint family. On the contrary, the price was paid by the defendant No.1. This evidence, is accepted by the Lower Appellate Court. The view taken by the Lower Appellate Court is a possible view of the matter, which does not give rise any substantial question of law, as are framed in this second appeal.

4] The learned counsel for the appellant has relied upon the following decisions - (i) *AIR 1989 SC 1042 Kalgonda Babgonda Patil v.*

Balgonda Kalgonda Patil and others (ii) AIR 1982 SC 887 *Nagesh Bisto Desai etc. v. Khando Tirmal Desai etc.* (iii) AIR 1977 Bombay 350 *Laxmibai Sadashiv Date and others v. Ganesh Shankar Date and others* (iv) 2008(6) Mh.L.J. 632 *Chinda Manji Koli since deceased through LRs. Bhatu Chinda Koli and others v. Manga Daga Koli*; to urge that the grant is always presumed to be in the name of the joint family. He submits that the evidence has come on record to show that the defendant No.1 was not doing any business and was not having any independent source of income. He submits that it is, therefore, presumed that the price was paid by the defendant No.1 out of the earnings of the joint family property. There is no evidence brought on record to establish the income of the joint family at the time of such grant in the year 1960. In view of this, the decisions relied upon by the learned counsel for the appellant are not applicable to the facts of the present case, more particularly, in the absence of any evidence that the allotment was in the name of the joint family.

5] In view of above, no substantial question of law is involved in the matter. The second appeal is dismissed.

JUDGE