

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

**SECOND APPEAL NO. 692 OF 2015
WITH
CIVIL APPLICATION NO. 1456 OF 2015**

Mr. Dattatray R. Patil & Ors.	... Appellants.
V/s.	
Mr. Vishwas R. Patil & Ors.	... Respondents

Ms. Gauri Jadhav for the appellant.

**CORAM : K. K. TATED, J.
DATED : 23/10/2015.**

P.C.:

. Heard learned Counsel for the appellant.

2 This Second Appeal is preferred by defendants challenging the concurrent finding of facts recorded by both the Court below.

3 In the present proceeding, the respondents plaintiffs filed Regular Civil Suit No. 682 of 2009 in the Court of Civil Judge, Junior Division, Kolhapur for partition and separate possession of HUF property bearing Gat No. 215, area 6 Acre and 21 R and Gat No. 219, area 9 Hector 6 R situated at Mouje Dhundvade, Taluka Gaganbawda, Dist. Kolhapur.

4 It was the case of the plaintiffs that the suit property was purchased by them by Sale Deed dated 30.01.1999. The same was purchased in the name of eight family members. Everybody had

contributed sum of Rs.1,37,500/-. As the defendants have refused to handover the separate possession of the suit property to the coparceners of HUF, they filed suit for partition and separate possession. That suit was decreed by the Trial Court by decree dated 29.07.2011 holding that the plaintiffs proved that the suit property was purchased jointly by the family members by Sale Deed dated 30.01.1999. Therefore, everybody was entitled to equal share in suit property.

5 Being aggrieved by the said decree passed by the Trial Court, the Appellants defendants preferred Regular Civil Appeal No. 323 of 2011. The Appellate Court framed the following points for consideration:

Sr. No.	POINTS	FINDINGS
1	Whether the respondents prove that they are real owners-joint owners with appellants in respect of the suit lands?	Yes.
2	Whether the appellant no.1 proves that the respondents are merely the ostensible owners under a benami transaction in respect of the suit lands?	No.
3	Whether the appellants have acquired the ownership of suit lands by adverse possession?	No.
4	Whether the interference is called for in the impugned Judgment & Decree of the Trial Court ?	No.
5	What order?	Appeal is dismissed with cost.

6 The Appellate Court after considering the evidence on record and Sale Deed dated 30.01.1999 held that the respondents plaintiffs proved that they are joint owners with the defendants in respect of suit land

and therefore, they are entitled equal share in the suit property. The Appellate Court by decree dated 29.11.2014 dismissed the Appeal preferred by the defendants. Hence, the present Second Appeal.

7 The learned Counsel Mrs. Gauri Jadhav appearing on behalf of Appellants defendants submits that both the Courts below erred in coming to the conclusion that suit property was purchased jointly by co-parceners of the HUF by Sale Deed dated 30.01.1999. She submits that though the name of co-parceners were shown in the Sale Deed, actual consideration was paid by the Appellants defendants only. She submits that when the property was purchased, the appellants were doing agricultural activities as well as having their own business. She further submits that since the purchase of the suit property i.e. 30.01.1999, the defendants are in possession of the suit land and they are cultivating the same. These facts are not considered by both the Courts below. She submits that in the present Second Appeal, the following questions of law arises:

“1 Whether the Ld. Judge has rightly come to the conclusion that the Plaintiff (Respondent) have proved that the suit property is purchased by him by paying consideration amount of Rs. 1,37,500/- without producing any evidence to that extent?

2 Whether the Ld. Judge has rightly decreed the suit in favour of the Plaintiff (Respondent) without proving that the property is purchased out of money paid by the Plaintiff?

3 Whether the Ld. Judge has rightly held that the appellant (Defendant) used to give produce from the suit land to the Plaintiff (Respondent) even though the Respondent has failed to produce any evidence to that extent?

4 Whether the Ld. Judge has rightly considered the entries

in the 7/12 extract to prove, who has purchased the suit land?

5 Whether the Ld. Judge has rightly considered the admissions given by the Respondent (Plaintiff) of which he has not given a single evidence?

6 Whether the Ld. Judge is erred in holding that the transaction is not a benami transaction?

7 Whether both the Courts below are right in coming to the conclusion only on the basis of the registered agreement produced without proving that the consideration is paid by the Respondent?

8 Whether both the Courts below erred in not considering the fact that the Respondent will not earning enough to purchase the suit property?"

8 On the basis of these submissions, the learned Counsel for the appellant submits that this Hon'ble Court be pleased to set aside the Judgment and Decree passed by the both the Courts below and hold that the suit property was purchased by the defendants by Sale Deed dated 30.01.1999 in the name of family members by their own money. Hence, other co-parceners / plaintiffs have no right, title and interest in respect of the same.

9 I heard learned Counsel for the appellants at length. It is to be noted that in the present proceeding, there is no dispute that the suit property was purchased by Sale Deed dated 30.01.1999 for sum of Rs.11 lacs. The plaintiff no.1 entered into witness box Exh.18 and specifically stated that the suit property was purchased in the name of eight persons of HUF. Everybody had contributed sum of Rs.1,37,500/-. The same was not challenged by anybody. Apart from that the defendants failed to produce on

record any documentary evidence to show that the entire consideration of Sale deed was paid by them only. Apart from that the defendants have not placed on record any documentary proof that they had paid sum of Rs.11 lacs from their own earnings.

10 Considering this fact that suit property was purchased in the name of eight persons (co-parceners of HUF) by Sale Deed dated 30.01.1999 and as there is concurrent findings of fact recorded by both the courts, I do not find any substantial question of law arises in the Second Appeal.

11 Hence, Second Appeal stands rejected.

12 In view of dismissal of the Appeal, nothing survives in the Civil Application. Hence, same is dismissed as infructuous.

(K.K.TATED, J.)