

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

**SECOND APPEAL NO.136 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 270 OF 2015**

Shri Arjunrao Sakharam Kangude
age 54 years, occ. Housewife
R/at. Oata No.702, Dattawadi,
Pune-411 030

.. Appellant.

V/s

1. Smt. Mandakini Sitaram Ovhal
(deceased, through legal
representative)

1A. Sou. Savita Santosh Sakpal
Age 35 years, occ. Service.

1B. Sou. Sangita Sitaram Ovhal
Age- 33 years, occ. Service.

1C. Sou. Sarita Sitaram Ovhal
Age- 31 years, occ. Housewife.

All R/at Oata No.702, Dattanagar,
District Pune-411 030.

.. Respondents.

Mr. Ashok B. Tajane, for Appellant.

Coram : Smt. R.P SondurBaldota, J.

Date : 04th March, 2015

P. C.

1. This Second Appeal challenges the concurrent findings of the Courts below on the rights claimed by the parties to the suit property and the fact of its possession. Respondents are the heirs of the original plaintiff, Mandakini. Appellant is the original defendant.

The brief statement of facts leading to the present proceedings is as follows :-

2. The father-in-law of Mandakini, one Laxman being a Flood Affected Person, was allotted, by the State Government Ota No.702 admeasuring 40 ft x 20 ft under the Scheme for Rehabilitation. He had constructed two rooms thereon and was residing therein with his family, including his son, Mandakini and their children. Laxman had constructed two more rooms adjoining to the Ota, which is the suit property. According to the respondents, in the year 1986, Laxman had on the request of appellant permitted him to occupy the suit property for a temporary period. Laxman was addicted to liquor. Taking advantage of it, appellant got gift deed executed from him in the name of his wife. On 12th February, 1987,

the Government decided to give the land allotted to Flood Affected Persons on ownership basis on payment of the amount as fixed by the Competent Authority. Laxman died on 11th June, 1988. According to the respondents, Mandakini deposited the entire amount of consideration of Rs.967.70 ps fixed by the Competent Authority and became owner of the suit property. Then Ota No.702 was mutated in her name in official revenue record.

3. Appellant had attempted to get the revenue record mutated in the name of his wife on the basis of the gift deed. On being unsuccessful in the attempt, appellant filed Regular Civil Suit No.671 of 1992 for declaration that he is owner of the suit property. That suit was dismissed on 30th October, 1999. Appeal preferred by his wife being Civil Appeal No.05 of 2000 was also dismissed. Despite these facts, appellant had on the basis of very gift deed resisted the suit filed by Mandakini for declaration of the title to the suit property and possession of two rooms from the appellant. He claimed that during his lifetime, Laxman had paid the entire consideration of purchase price of Ota No.702. He further claimed that Laxman used to treat his wife as a daughter and out of love and

affection had executed gift deed in her favour. It was his further claim that he and his wife were residing with Laxman in the suit property until Laxman died on 11th June, 1988.

4. The Courts below noted that the status of wife of appellant in respect of the suit property has already been decided by a Competent Civil Court. The claim of title made by her on the basis of the gift deed was rejected. Therefore, there could be no reagitation of the claim even by way of defence to the suit filed by Mandakini. Beside, the deed of gift was held to be a bogus document in view of the fact that on the date of gift i.e. on 12th February, 1987, Laxman was not yet the owner of the suit property and as such incapable of transferring his title. The demand notice for allotting the land to the Flood Affected Persons on ownership basis was issued by the Government five months after execution of the gift deed. Further, records show that payment of purchase price was infact made by Mandakini after the death of Laxman. It is, thus, seen that Courts below have not only noted the failure on the part of the wife of appellant in establishing the title in earlier proceedings initiated by her, but have also independently arrived at the conclusion that claim

of the appellant to the suit property, through his wife is without merit. Therefore, there can be no interference with the impugned order. There is no substantial question of law arising for the consideration of the Court and hence, the Second Appeal is dismissed.

5. In view of dismissal of the second appeal, the civil application is disposed off, as does not survive.

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