

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Second Appeal No.26 of 1991

- 1) Ganesh Venkatrao Deshmukh.
- 2) Pradeep Venkatrao Deshmukh.
- 3) Venkatrao Santukrao Deshmukh.
- 4) Kusum w/o Fakirrao Gadhe. .. **Appellants.**

Versus

- 1) Raosaheb Santukrao Deshmukh,
Died, through legal
representatives :
 - 1-A) Baban s/o Raosaheb Deshmukh.
 - 1-B) Balu s/o Raosaheb Deshmukh.
 - 1-C) Sakharabai Raosaheb Deshmukh.
 - 1-D) Pratibha Raosaheb Deshmukh.
 - 1-E) Babi d/o Raosaheb Deshmukh.

All r/o Ganpati Galli, Bhokardan,
Taluka Bhokardan, Dist. Jalna.
- 2) Vinayakrao S/o. Santukrao Deshmukh
dead, through his legal representatives
 - 2-A) Dwarakabai w/o Vinayakrao Deshmukh,
Occupation : Household,
R/o Bhokardan, Taluka Bhokardan,
District Jalna.
 - 2-B) Sushilabai w/o Gumanrao Shinde,
Age 60 years,
Occupation : Household,

R/o Boregon, Taluka Sillod,
District Jalna.

- 2-C) Arun s/o. Vinayakrao Deshmukh,
Age 56 years,
Occupation: Agriculture,
R/o. Deshmukh Galli, Bhokardan,
Taluka Bhokardan, District Jalna.
- 2-D) Sulochanabai w/o. Shivajirao Pawar,
Age 50 years,
Occupation: Household,
R/o. Pangri, Taluka Badnapur,
District Jalna.
- 2-E) Dattatray s/o. Vinayakrao Deshmukh,
Age 45 years,
Occupation: Agriculture
R/o Bhokardan, Taluka Bhokardan,
District Jalna.
- 2-F) Latabai w/o Devidasrao Bhosle,
Age 42 years,
Occupation: Household,
R/o. Garkheda Parisar,
Near Radha Krishna Mangal
Karyalaya, Besides Gajanan Mandir,
Aurangabad,
Taluka & District Aurangabad.
- 2-G) Digambarrao s/o. Vinayakrao Deshmukh,
Age 40 years,
Occupation: Agriculture
R/o. Deshmukh Galli, Bhokardan,
Taluka Bhokardan, District Jalna.
- 3) Sheshrao Santukrao Deshmukh
- (3-i) Zabubai w/o Sheshrao Deshmukh.
- (3-ii) Rajendra Sheshrao Deshmukh.
- (3-iii) Leelabai wd/o Venkatrao Pawar.

(3-iv) Malanbai w/o Bhausahab Pawar.

(3-v) Shobhabai w/o Haridas Mokashi.

(3-vi) Usha w/o Diliprao Deshmukh. .. **Respondents.**

Shri. V.D. Salunke, Advocate, for appellants.

Shri. V.D. Patnoorkar, Advocate, for respondent Nos.1 to 1E and 2A to 2G.

CORAM: T.V. NALAWADE, J.

DATE : 16th JUNE 2016.

JUDGMENT:

1) The appeal is filed against the judgment and decree of Regular Civil Suit No.75/1978 which was pending in the Court of the Civil Judge, Junior Division, Bhokardan, District Jalna and also against the judgment and decree of Regular Civil Appeal No.56/1984 which was pending in the Court of the 2nd Additional District Judge, Jalna. The suit filed by respondent Raosaheb for relief of partition and separate possession of his share from two agricultural lands is decided in his favour and so the original defendants have challenged the said decision. Both the sides are heard.

2) In short the facts leading to institution of the proceeding can be stated as under:

3) Plaintiff is real brother of defendant Nos.3 to 5. Defendant Nos.1 and 2 are sons of defendant No.5 and defendant No.6 is the sister of plaintiff. The suit was filed in respect of agricultural lands bearing Survey No.125 and 126 situated in village Bhokardan. The total area of these two lands is around 50 acres.

4) It is the case of the plaintiff that the suit lands were inam lands in which father of the plaintiff and defendant Nos.3 to 6 was the tenant and the lands were being cultivated by the joint family consisting of his father. It is the case of the plaintiff that under the provisions of the Inam Abolition Act, the inam was abolished but occupancy rights were given to his father Santukrao and the price was paid in respect of the occupancy rights. It is contended that the price was paid in the year 1969 and so the property became available to the family in the year 1969 for consideration of partition.

5) It is the case of the plaintiff that under the provisions of the Hyderabad Abolition of Inam and Cash Grants Act rights were given and certificate was issued in favour of his father but under the said Act, there are restrictions on the transfer in any way including by way of gift. It is contended that in contravention of the provisions of the said Act, Santukrao executed gift deed in favour of defendant No.1 in collusion with defendant No.5. It is contended that gift was not executed for pious purpose and under the Hindu law said gift cannot be recognised in law. This gift was executed on 27-12-1968. It is contended that as the document of gift was executed in the year 1968, before the payment of occupancy rights there is no question of treating the gift deed as a valid.

6) It is the case of the plaintiff that the ancestral property of the joint family of Santukrao and his sons was partitioned by mutual consent about 20 years prior to the date of suit but the suit properties were not considered for partition due to aforesaid circumstances. It is contended that in view of this circumstance, the plaintiff is entitled to get share in the property and even if it is presumed that

his father had gifted his share, the plaintiff is entitled to get at least 1/5th share in the suit property. The suit was filed in the year 1978.

7) Defendant Nos.1,2 and 4 to 6 filed joint written statement and contested the matter. They admitted that the partition of the ancestral property had taken place long back. They also admitted that Santukrao was tenant in the suit properties and occupancy rights were granted in favour of Santukrao under the Inam Abolition Act. They contended that the suit property was self acquired property of Santukrao and so he could gift this property to anybody and out of love and affection he gifted the property to defendant No.1. It is contended that the sons of Santukrao have no concern with the property as the property is gifted to defendant No.1. They contended that partition had taken place in the year 1954.

8) Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. The trial court held that the gift was not valid for many reasons including the bar of provisions of the Inam Abolition Act. The trial

Court set aside the gift in respect of the share of the plaintiff, 1/5th share, and decree of possession of this share was given. This decision was challenged by the defendants. In the appeal the plaintiff filed cross-objection. The first appellate Court has held that the entire gift was void. However, 1/5th share given by the trial Court is maintained.

9) This Court admitted the appeal by order dated 21-1-1991 by observing that substantial questions of law can be formulated on the basis of the grounds raised in paragraphs 2 to 9 of the appeal memo. The sum and substance of the grounds and the substantial questions of law which need to be decided are as under :

(1) whether the provisions of the Hyderabad Inam Abolition and Cash Grants Act, 1952 are applicable to the suit property ?

(2) whether civil court has jurisdiction to entertain the suit for partition in respect of the properties acquired under the aforesaid Act ?

(3) whether the Courts below have committed error in holding that there was restriction on the holders of occupancy rights to transfer the ownership in the land due to provision of the aforesaid Act ?

(4) whether such transfer could have been approved by the authority even subsequently ?

(5) whether it was necessary to challenge the gift deed for getting share in the property.

10) The defendants have contended that the partition had taken place amongst Santukrao and his sons in the year 1954. This year is chosen to see that it is proved that joint family was not in existence in the year 1954 when Inam Abolition Act came in force. There is record like mutation and 7/12 extracts showing that the mutation of partition was sanctioned on 20-3-1960. This record needs to be given due importance as the plaintiff can show that the property was received by Santukrao for cultivation even as tenant when he and his sons were living in joint family. He could have shown that they all were cultivating the land though the occupancy certificate was granted in favour of Santukrao. Further he could have

shown that there was sufficient nucleus and income from the nucleus was sufficient to undertake the activity of cultivation of the land admeasuring around 50 acres.

11) The ancestral lands were Survey No.144/4 admeasuring 2 acres 24 gunthas; Survey No.146/3 admeasuring 2 acres 39 gunthas; Survey No.130/1 admeasuring 16 acres 24 gunthas.

12) The revenue record and the mutations show that at least till the year 1960 the family was joint. Only after the year 1959-60 the lands were shown to be separately cultivated by the sons of Santukrao (Exhibits 34 to 48).

13) The record in respect of Survey Nos.125 and 126 show that in the year 1954 Gulam Shaikh was shown as Inamdar. Though inam was shown as madad-mas, there is a mention of Shaban Dargah Sharif and it shows that the land was given for rendering service to this institution. Name of Santukrao was entered as protected tenant (Exhibits 49 and 50). Record of *Pik Pahani Patrak*,

cultivation record, shows that not only name of Santukrao but name of Venkatrao, son of Santukrao was also separately entered for two years in cultivation column and the name of Venkatrao was there for 1956-57 and 1957-58 (Exhibits 51 and 52). Exhibit 5, 7/12 extract in respect of Survey No.125 shows that in the year 1956 Venkatrao, son of Santukrao, agreed to purchase this property for consideration of Rs.3000/-. Thus, on one hand the land was shown as madad-mas inam though the purpose behind this was to render service to religious institution and on the other hand, Venkatrao, father of defendant No.1 had given consideration for purchasing the rights. It can be said that this consideration was paid to the previous Inamdar. This record cannot be ignored. The defendants have not come with any specific case in respect of this entry and this entry of 1956 has presumptive value and it was necessary for the defendants to explain this entry. If Santukrao and his sons were living in joint family till 1960 and some consideration was paid for getting the rights in respect of the property, inference was easy that the consideration was paid by joint Hindu family and the transaction was made for all the members

of the joint Hindu family. It is already observed that there was sufficient ancestral property with the family from which such transaction could have been made. This circumstance goes to the root of everything including the gift deed executed by Santukrao in favour of defendant No.1.

14) There is force in the case of the plaintiff that the suit property was not partitioned as necessary rights, occupancy rights, were not given by the authority under the Inam Abolition Act. Admittedly these rights were given in the year 1969. Further the conduct of Santukrao of executing the gift deed in favour of son of only Venkatrao shows that he wanted to deprive the plaintiff of his rights in respect of the suit properties. At that time Santukrao had no right to gift the property as he was not the owner and further it was the property of the joint Hindu family.

15) The restrictions imposed by the provisions of the Inam Abolition Act were there and the permission of the authority was necessary before making such transactions. Such permission was not taken, further

transaction cannot bind the plaintiff and so it is open to person like the plaintiff to say that the transaction was void. He was not party to the transaction. Learned counsel for the appellants placed reliance on this point on a case reported as **1981 Bom. C.R. 32 (Vithal Kondhalkar v. State of Maharashtra)** (Bombay High Court) and submitted that in view of provisions of Section 59 of the Maharashtra Land Revenue Code such permission could have been given by the authority even after the date of transaction. These observations were made in different circumstances. The facts of the present case are totally different and it was not possible for Santukrao to alienate the property.

16) In view of the aforesaid record and the provisions of law, the oral evidence cannot make much difference. The Courts below have held that the plaintiff is entitled to get share in the property though different reasons were given. So the aforesaid points are answered against the appellants and the appeal is dismissed.

Sd/-
(T.V. NALAWADE, J.)

rs1