

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

**SECOND APPEAL NO.278 OF 2012**

Shri Dashrath Aba Zaware  
Age 75 years, Occ.Agriculture,  
R/o Bhondre, Ta. Parner,  
District Ahmednagar

.. APPELLANT  
[ORI.PLAINTIFF]

**VERSUS**

- 1] Parubai w/o Aba Zaware  
(Died, name deleted)
- 2] Thakubai @ Raubai w/o Nana Chemate  
(Deceased and her legal heirs)
- 2A] Bhanudas Vitthal Walunj,  
Age 55 years, Occ.Agriculture,  
R/o Room No.425, Building No.11  
Mumbai Dock Labour Board Colony,  
Cotton Green, Mumbai 33
- 2B] Raosaheb Vitthal Walunj  
Age 53 years, Occ.Agriculture
- 2C] Shobha Sudam Zaware  
Age 50 years, Occ.Agriculture,
- 2D] Gaba Nana Chemate  
Age 55 years, Occ.Agriculture
- 2E] Janabai w/o Kisan Shinde  
Age 53 years, Occ.Agriculture  
  
R.No.2B to 2E R/o Wasunde  
Tq. Parner, District Ahmednagar
- 2F] Kausabai w/o Kondibhau Rokade

Age 50 years, Occ.Agriculture  
R/o Wadgaon Savtal,  
Tq.Parner, District Ahmednagar

- 2G] Kantabai w/o Laxman Chemate  
Age 53 years, Occ.Agriculture  
R/o Wasunde, Tq. Parner  
District Ahmednagar
- 2H] Shaila w/o Sahebrao Hulawale  
Age 40 years, Occ.Agriculture  
R/o Karjule Hariya (Wafarewadi),  
Tq. Parner, District Ahmednagar
- 2I] Manisha w/o Chhagan Thange  
Age 38 years, Occ.Agriculture  
R/o Tikhol, Tq. Parner  
District Ahmednagar.
- 2J] Naina w/o Suresh Wable  
Age 36 years, Occ.Agriculture  
R/o Sitabai Chawal, Chakkinaka  
At Post and Tal. Kalyan  
District Thane.
- 2K] Alka w/o Bhausahab Zaware  
Age 34 years, Occ-Agriculture
- 2L] Yogesh Laxman Chemate  
Age 30 years, Occ.Agriculture
- R2K and 2L both R/o Wasunde,  
Tq. Parner, District Ahmednagar
- 2M] Hausabai w/o Dattatraya Aher  
Age 53 years, Occ.Agriculture  
R/o Mandave Khd., Tq. Parner  
District Ahmednagar
- 3] Gaubai @ Tarabai w/o Baburao Rokade  
Age 75 years, Occ.Agriculture  
R/o Wadgaon Savtal, Tq. Parner  
District Ahmednagar.
- 4] Bhau Aba Zaware  
Age 70 years, Occ.Agriculture

R/o Gadilgaon, Tq. Parner  
District Ahmednagar

- 5] Shewantabai w/o Bhau Zaware  
Age 67 years, Occ.Agriculture  
As above.

.. RESPONDENTS  
(ORI.DEFENDANTS)

...  
Mr.V.D.Hon, Senior Advocate for Appellant.  
Mr. A.B.Gatne, Adv for Respondents No.4 and 5.  
Respondents No.2B to 2M, 2J and 3 to 5 served

...

**CORAM : SUNIL P. DESHMUKH,J.**

**DATED : 17TH NOVEMBER,2016**

**ORAL JUDGMENT :-**

Heard learned counsel for the parties.

2] The appellant had instituted a Suit seeking partition and possession in respect of several properties against defendants no.4 and 5 claiming that plaintiff and defendants constituted a joint family which possesses sufficient means to for acquisitions as have been made in the name of defendants no.4 and 5. While defendants no.4 and 5 appeared in the Suit, they had pointed out certain properties having not been included in the Suit which were ancestral properties and thus filed counter claim for partition and separate possession of the said properties. The parties to the Suit were not in dispute over that, some of the properties were indeed joint family properties. While the parties went to the trial Court, upon evidence, the trial Court passed a decree holding plaintiff would be entitled to take

share and defendants no.2 and 3 each would be entitled to 1/20<sup>th</sup> share and defendant no.4 to 3/10<sup>th</sup> share in the properties bearing land Gat Nos.129, 137, 338, 353 and 442 situated at Bhondre, Tq. Parner, Dist.Ahmednagar and land Gat No.4849, 4861,4865,4868 and 4869 situated at village Kanhur-Pathar, Tq. Parner, Dist.Ahmednagar further declaring that the plaintiff and defendant no.4 would be entitled to 3/8<sup>th</sup> share and defendants no.2 and 3 each are entitled to 1/8<sup>th</sup> share in the house properties referred to under Clause 4 of the operative order of decree and dismissed the Suit of the appellant/plaintiff in respect of land Gat No.136, 138, 429 and 435 situated at village Bhondre, Tq.Parner and in respect of Gat Nos.2394 and 2396, 2397/1, 2400 and Gat No.2401 situated at village Nighoj, Tq. Parner, as well as in respect of House No.76 at village Gadilgaon, Tq. Parner.

3] Aggrieved by aforesaid order, Appeal had been preferred vide Regular Civil Appeal No.144/2007 which came to be dismissed under judgment and order dated 16/11/2011. Learned Senior counsel Mr.V.D.Hon appearing for the appellant vehemently contends that the appellate as well as trial Court have found the joint family to be possessed of sufficient nucleus. In the circumstances, the burden which has been purportedly shifted on defendants no.4 and 5 can not be said to have been sufficiently discharged by them. He submits that while it has been considered by the Courts that there is sufficient time lag between the acquisitions made in the name of defendants no.4 and 5, it has not been considered that from the joint family nucleus sufficient income had been accumulated, from which the purchases of properties can be said to have been made. It is further being submitted that the defendants no.4 and 5 have not at all referred to the quantum of income generated from the so called service of defendant no.4. According to him, preponderance of

possibilities and by virtue of position of law the burden has been sufficiently discharged by the plaintiff. The same has not received due consideration while both Courts have delivered judgments.

4] On the other hand, Mr.Gatne, appearing for the defendants no.4 and 5 contends that it has come on record that defendants no.4 and 5 had been staying away from the family on account of strained relations. It has further come on record that defendant no.4 has been a salaried employee since 1959. It is not the case of the other son that the employment of defendant no.4 had never generated income. Apart from this, he contends that besides vague statement in the deposition with regard to income being generated from the so called nucleus nothing further has been placed on record which can be said to have been enough for making acquisitions in the name of defendants no.4 and 5. He submits that defendant no.4 is not the elder brother of appellant-plaintiff. If the acquisitions are to be said to be brought about by joint family in the natural course, during the time governing the transactions, those would have been made in the name of eldest person in the family. He submits that the evidence as on record sufficiently shows claim with regard to acquisition made with the aid of so called nucleus of the joint family stands falsified.

5] After having heard learned counsel, looking at the evidence as has been appreciated by the Courts particularly having regard to plaintiffs evidence, which shows that although it is claimed by the plaintiff that acquisitions have been made from the joint family property, yet the evidence shows the plaintiff can be said to hardly have any knowledge about the transactions by which the acquisitions have been made. Both the Courts have sufficiently considered these aspects and appreciated the same. Besides it has to be considered that the plaintiff was eldest member of the family. There is no

explanation coming forth as to why properties were being acquired in the name of younger brother. The appreciation of the Court does not appear to be away from the record much less perverse. In the circumstances, Second Appeal does not appear to give rise to any substantial question of law. Second Appeal as such stands dismissed.

6] In view of disposal of Second Appeal, Civil Application No.5911/2012 stands disposed of.

**(SUNIL P. DESHMUKH,J.)**

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