

*Sequeira*

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

***SECOND APPEAL NO. 828 OF 2012  
Along with  
Civil Application No.1613 of 2012***

Shri Balkrishna Maruti Bhosale

Since deceased through L.Rs

Shri Jotiram Balkrishna Bhosale.

... Appellant

V/s.

Pandurang Maruti Bhosale & ors.

... Respondents.

Mr.Girish Agrawal, for the Appellant / Applicant.

Mr.N.V.Bandiadekar, for Respondent Nos.1 and 4.

***Coram : N.M. Jamdar, J.  
Friday 10 June, 2016.***

**P.C. :-**

By this Appeal, the Appellant challenges the concurrent Judgment and orders passed by the Civil Judge, Junior division Karad and the District Judge, Karad. The learned Civil Judge partly decreed the suit filed by the Appellant and granted share in the suit property except Gat no.176, 417, 22 and 221. As regards denial of share to this property the Appellant filed an appeal to the District Court, Karad which has been dismissed.

2. The learned counsel for the Appellant submitted that the existence of joint family is not disputed. He submitted that there were certain

agricultural lands from which the properties in question were purchased by the Respondents as a joint family property. He submitted that once existence of nucleus was proved the burden shifted on the Respondents to demonstrate their independent source of income which the Respondents have failed to do. He also submitted that both the Courts have stated a wrong requirement that the sale deed must specify that the properties were self acquired as joint family. He relied upon the decision in the case of *Appasaheb Peerappa Chandgade V. Devendra Peerappa Chandgade and Ors. -AIR 2007 SC 218*. The learned counsel for the Respondents contended that for forty years the Appellant did not raise any objection as regards sale deed and did not enter witness box to depose in respect of the factual position which was in his knowledge. He submitted that both the Courts have concurrently held that the nucleus was not in existence.

3. The proposition that once nucleus is established, the burden shifts on the one to claim that the properties are self acquired cannot be disputed and which is the ratio laid down by the Apex Court in the judgment cited. However, in the present case the question is whether the nucleus was established, which question is one of fact. The nucleus of joint family is stated to be certain agricultural lands. Both the Courts have rendered a finding of fact that the lands were basically dry crop lands, depending solely on rainfall and could not produce enough yield. It is the case of the Appellant that he contributed certain amounts for purchase of the properties from his employment in a mill. The properties in question were purchased around 1962 to 1964 and the suit is filed in the year 2003. The Appellant's son who deposed on behalf of the

Appellant was not born when the transaction took place and could not possibly know the details of payment. Both the Courts therefore have drawn an inference that Appellant has not proved his contribution for purchase of the property. Neither pleadings are satisfactory nor documentary evidence was produced. Nothing contrary is shown to assail the finding that the lands were of poor quality. Both the Courts have therefore rendered finding of fact that these lands could not form a nucleus and therefore, there was no question of shifting the burden. Even otherwise the Respondent No.2 was doing a tailoring business and had a source of income.

4. Next contention of the Appellant was that there is no requirement to mention in the sale deed regarding the properties purchased for joint family. In the plaint, the Appellant has stated that all the properties were purchased for the joint family. It is in this context that the Courts have observed that there is no mentioning of this fact in the sale deed. Therefore nothing much turns on this point. One of the sale deeds is in name of Respondent No.2, who is not even karta of the family. In the circumstances, no perversity can be found in the factual finding by both the Courts that the lands in question were not joint family properties. No question of law arises. Second Appeal is accordingly dismissed.

5. In view of the above, the Civil Application stands disposed of.

*(N.M. Jamdar, J.)*