

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

**SECOND APPEAL NO.17 OF 2014
ALONG WITH
CIVIL APPLICATION NO.62 OF 2014**

Sou. Sheetal Ulhas Dangi	)	
Age 47 yrs. Occu. Household,	)	
Residing at Anav (Ghatache Pedwadi)	)	
Tal.Kudal, District-Sindhudurg.	)	.. Appellant
		(Ori. Defendant no.22)

Versus

- | | | | |
|----|---|---|--|
| 1. | Subhash Shivaji Sawant (deceased) |) | |
| | through his legal heirs |) | |
| A. | Smt.Shubhangi Subhash Sawant |) | |
| | Age 55 yrs., Occ. Household, |) | |
| B. | Shri Prashant Subhash Sawant |) | |
| | Age 35 yrs., Occ. Service, |) | |
| C. | Shri Harish Subhash Sawant |) | |
| | Age 30 yrs., Occ. Service, |) | |
| D. | Sou.Bhargavi Vaibhav Bagave |) | |
| | Age 32 yrs., Occ. Household, |) | |
| E. | Ku.Swati Subhash Sawant |) | |
| | Age 27 yrs., Occ. Service, |) | |
| | Residing at Sadguru Nagar,Sindhudurg CHS, |) | |
| | C Wing, 705, Devipada, Borivali (East), |) | |
| | Mumbai 400 066. |) | |
| 2. | Shri Ramchandra Ganpat Sawant |) | |
| | Age 72 yrs. Occ-Agriculture, |) | |
| | Residing at Bhirawande, |) | |
| | Hanumanwadi, Tal.Kankawali, |) | |
| | District-Sindhudurg. |) | |
| 3. | Shri Bhalchandra Ganpat Sawant |) | |
| | Age 62 yrs., Occ. Service |) | |
| | Residing at Alankar Colony, |) | |
| | Vitthalwadi (East), Kalyan. |) | |

4. Smt.Subhadra Arjun Sawant)
Age 76 yrs., Occ-Household)
Residing at Pokharan, Tal.Kudal)
5. Smt.Sunita Vishwanath Sawant)
Age 67 yrs. Occ.Household)
Residing at Warawade,)
Tal.Kankavali, Dist.Sindhudurg)
6. Smt.Anita Anil Rane)
Age 52 yrs., Occ. Household)
Residing at Shivaranjan Society)
Chawl No.3, Room No.50,)
Jogeshwari (E), Mumbai.)
7. Shri Manoj Devendra Sawant)
Age 37 yrs., Occ. Service.)
8. Shri Nilesh Devendra Sawant)
Age 32 yrs., Occ. Education.)
9. Smt Vanita Devendra Sawant)
Age 72 yrs., Occ. Household.)
10. Shri Ashok Vitthal Sawant)
Age 66 yrs., Occ.Service)
7 to 10 residing at B/1/302,)
Raghukul CHS, Parsik Nagar,)
Kalawa (West), Thane 400 605.)
11. Shri Satish Vitthal Sawant)
Age 52 years, Occ-Service,)
Residing at 86, Tukaram Cottage,)
(Gundavali), Azad Lane, Andheri (E))
Mumbai 400 069.)
12. Smt.Sunita Bhaurao Satam)
Age 59 yrs. Occ. Household)
Residing at AL/6, Buld. No.19.)
Room No.5, Prathamesh Apt.,)
Sector 5, Airoli Navi Mumbai)

13. Shri Sharad Vasant Sawant)
Age 62 yrs., Occ.Service)
Residing at Damu Shivaji Chawl)
Devipada, Borivali (E))
Mumbai-400 092.)
14. Shri Anil Vasant Sawant)
Age 57 yrs., Occ. Service)
Residing at 203, Amey Apt.)
Devipada, Borivali (E))
Mumbai 400 092.)
15. Shri Sunil Vasant Sawant)
Age 45 yrs., Occ. Service)
Residing at 402, Prathamesh Apt.)
Devipada, Borivali (E))
Mumbai 400 092.)
16. Smt. Pramodini Vasant Sawant)
since deceased through her legal heirs)
Respondent nos.13 to 15.)
17. Smt. Sunita Shantaram Sawant)
since deceased through her legal heirs)
Respondent nos.2 to 15 and 18 to 22)
18. Smt.Bhargav Shivaji Sawant)
Age 62 yrs., Occ.Service)
Residing at B/8, Best Kamgar Vasahat)
Dindoshi, Goregaon (E),)
Mumbai- 400 097.)
19. Sudhir Shivaji Sawant)
Age 53 yrs., Occ.Service)
Residing at E/15,Best Kamgar Vasahat)
Dindoshi, Goregaon (E),)
Mumbai- 400 097.)
20. Shahu Shivaji Sawant)
Age 53 yrs., Occ.Service)

- Residing at E/15,Best Kamgar Vasahat)
Dindoshi, Goregaon (E),)
Mumbai- 400 097.)
21. Smt. Sunita Ganpat Rane)
Age 69 yrs. Occ-Household,)
Residing at Plot No.15, Prathana CHS)
7th floor,, Block no.704,)
Jawahar Nagar, S.V. Road,)
Goregaon (West), Mumbai 62.)
22. Smt.Nandini Narendra Bagave)
Age 55 yrs., Occ. Household)
Residing at Abdul Rehaman Chawl,)
Room No.3, Samarth Nagar,)
Majakhawadi, Jogeshwari (East))
Mumbai - 400 060.)
23. Shri Ashok Bhanu Alawe,)
Age 55 yrs. Occ. Business)
Residing at Laxmiwadi, Kudal)
Tal. Kudal, District-Sindhudurg.)
24. Smt.Shobha Sharad Mestri)
Alias Bhadagaonkar, Age 45 yrs.)
Occ. Household, Residing at Vetar)
Bamabrde, Pavaniche Temb,)
Tal. Kudal, District-Sindhudurg.)
25. Shri Prabhakar Vitthal Terse)
Age 65 yrs, Occ. Service,)
Residing at Vetar Bamabrde,)
Pavaniche Temb, Tal. Kudal,)
District-Sindhudurg.)
- .. Respondents
(Ori.Plaintiff and Defendant
Nos.1 to 21, 23 to 25)

**ALONG WITH
SECOND APPEAL NO.493 OF 2016
ALONG WITH
CIVIL APPLICATION NO.3 OF 2014**

- | | | |
|----|---|--|
| 1. | Shri Ramchandra Ganpat Sawant)
Age 73 yrs. Occ-Agriculture,)
Residing at Bhirawande,)
Hanumanwadi, Tal.Kankawali,)
District-Sindhudurg.) | |
| 2. | Shri Bhalchandra Ganpat Sawant)
Age 60 yrs., Occ. Service)
Residing at Alankar Colony,)
Vitthalwadi (East), Kalyan.) | |
| 3. | Smt.Subhadra Arjun Sawant)
Age 75 yrs., Occ-Household)
Residing at Pokharan, Tal.Kudal) | |
| 4. | Smt.Sunita Vishwanath Sawant)
Age 67 yrs. Occ.Household)
Residing at Warawade,)
Tal.Kankavali, Dist.Sindhudurg) | |
| 5. | Smt.Anita Anil Rane)
Age 52 yrs., Occ. Household)
Residing at Shivaranjan Society)
Chawl No.3, Room No.50,)
Jogeshwari (E), Mumbai.) | .. Appellants
(Ori. Defendant nos.1 to 5) |

Versus

- | | | |
|----|---|---------------------------------------|
| 1. | Subhash Shivaji Sawant)
Age 66 yrs. Occ.Agri and Service)
R/o. Sadguru Nagar,Sindhudurg CHS,)
C Wing, 705, Devipada, Borivali (East),
Mumbai 400 066.) | .. Respondent
(original plaintiff) |
| 2. | Shri Manoj Devendra Sawant)
Age 36 yrs., Occ. Service.) | |

3. Shri Nilesh Devendra Sawant)
Age 32 yrs., Occ. Education.)
4. Smt Vanita Devendra Sawant)
Age 62 yrs., Occ. Household.)
Defendant nos.2 to 4, r/o.B/1/302,)
Raghukul CHS, Parsik Nagar,)
Kalawa (West), Thane 400 605.)
5. Shri Ashok Vitthal Sawant)
Age 64 yrs., Occ.Service)
residing at B/1/302,)
Raghukul CHS, Parsik Nagar,)
Kalawa (West), Thane 400 605.)
6. Shri Satish Vitthal Sawant)
Age 52 years, Occ-Service,)
Residing at 86, Tukaram Cottage,)
(Gundavali), Azad Lane, Andheri (E))
Mumbai 400 069.)
7. Smt.Sunita Bhaurao Satam)
Age 57 yrs. Occ. Household)
Residing at AL/6, Buld. No.19.)
Room No.5, Prathamesh Apt.,)
Sector 5, Airoli Navi Mumbai)
8. Shri Sharad Vasant Sawant)
Age 60 yrs., Occ.Service)
Residing at Damu Shivaji Chawl)
Devipada, Borivali (E))
Mumbai-400 092.)
9. Shri Anil Vasant Sawant)
Age 57 yrs., Occ. Service)
Residing at 203, Amey Apt.)
Devipada, Borivali (E))
Mumbai 400 092.)
10. Shri Sunil Vasant Sawant)
Age 44 yrs., Occ. Service)

- Residing at 402, Prathamesh Apt.)
Devipada, Borivali (E))
Mumbai 400 092.)
11. Smt. Pramodini Vasant Sawant)
since deceased through her legal heirs)
Respondent nos.12 to 14.)
12. Smt. Sunita Shantaram Sawant)
since deceased through her legal heirs)
Respondent nos.1 to 11 and 13 to 17)
13. Smt.Bhargav Shivaji Sawant)
Age 62 yrs., Occ.Agri)
Residing at B/8, Best Kamgar Vasahat)
Dindoshi, Goregaon (E),)
Mumbai- 400 097.)
14. Sudhir Shivaji Sawant)
Age 52 yrs., Occ.Service)
15. Shahu Shivaji Sawant)
Age 52 yrs., Occ.Service)
Respondent nos.14 & 15 both are)
Residing at E/15,Best Kamgar Vasahat)
Dindoshi, Goregaon (E),)
Mumbai- 400 097.)
16. Smt. Sunita Ganpat Rane)
Age 68 yrs. Occ-Household,)
Residing at Plot No.15, Prathana CHS)
7th floor,, Block no.704,)
Jawahar Nagar, S.V. Road,)
Goregaon (West), Mumbai 62.)
17. Smt.Nandini Narendra Bagave)
Age 54 yrs., Occ. Household)
Residing at Abdul Rehaman Chawl,)
Room No.3, Samarth Nagar,)
Majakhawadi, Jogeshwari (East))
Mumbai - 400 060.)

18. Sou. Sheetal Ulhas Dangi)
Age 52 yrs. Occu. Household,)
Residing at Anav (Ghatache Pedwadi)
Tal.Kudal, District-Sindhudurg.)
19. Shri Ashok Bhanu Alawe,)
Age 54 yrs. Occ. Business)
Residing at Laxmiwadi, Kudal)
Tal. Kudal, District-Sindhudurg.)
20. Smt.Shobha Sharad Mestri)
Alias Bhadagaonkar, Age 44 yrs.)
Occ. Household, Residing at Vetel)
Bamabrde, Pavaniche Temb,)
Tal. Kudal, District-Sindhudurg.)
21. Shri Prabhakar Vitthal Terse)
Age 64 yrs, Occ. Service,)
Residing at Vetel Bamabrde,)
Pavaniche Temb, Tal. Kudal,)
District-Sindhudurg.)
- .. Respondents
(original Defendants)

Mr.Sudhir Prabhu for the appellant in SA No.17 of 2014.

Mr.Sanskar Marathe for the appellants in SA No.493 of 2016.

Mr.Keshav Borhade for the respondent nos.1A to 1D, 10 and 18 to 22 in SA No.17 of 2014 and for the respondent nos.1A to 1D and 13 to 17 in SA No.493 of 2016.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 5th December 2016

PRONOUNCED ON : 16th December 2016

Judgment :-

. By these two appeals filed under section 100 of the Code of Civil Procedure, 1908 which arise out of the judgment and decree dated 13th August 2013 passed by the learned Principal District Judge, Sindhudurg-Oros were thus heard together and are being disposed of by a common order.

2. Second Appeal No.17 of 2014 is filed by the appellant (original defendant no.22) impugning the said judgment and decree dated 13th August 2013 declaring the sale deeds of the suit lands executed by the defendant no.1 in favour of the defendant nos.22, 23 and 24 not binding on the share of the plaintiff and the defendant nos.17 to 21. Second Appeal No.493 of 2016 is filed by the original defendant nos.1 to 5 thereby impugning the said judgment and decree dated 13th August 2013 passed by the District Court-1, Sindhudurg at Oros thereby setting aside the decree passed by the learned Civil Judge, Junior Division, Kudal in Regular Civil Suit No.80 of 2001 and passing a decree for partition by declaring shares of the plaintiff, defendant nos.17 to 21 and the defendant nos.12 to 15. Some of the relevant facts for the purpose of deciding these two second appeals are as under :-

3. The parties in this judgment are described as per their original status in the Regular Civil Suit No.80 of 2001. The respondent no.1 was the original plaintiff before the trial Court. The respondent nos.2 to 21 and 23 to 25 were the original defendants. It was the case of the plaintiff that the suit property was owned by deceased Pundalik Ramchandra Sawant, paternal uncle of the plaintiff and the defendants. The said Pundalik Ramchandra Sawant died on 19th October 1996. After demise of the said Pundalik, the plaintiff and the defendant nos.1 to 21 who were his legal heirs became owners of the suit property. It was the case of the plaintiff that the plaintiff and the defendant nos.17 to 21 have $\frac{1}{4}$ th share in the suit property. The defendant nos.1 to 5 have $\frac{1}{5}$ th share jointly and defendant nos.6 to 11 have $\frac{1}{5}$ th share jointly and the defendant nos.12 to 16 have $\frac{1}{5}$ th share jointly.

4. It was the case of the plaintiff that after demise of the Pundalik, the plaintiff and defendant nos.1 to 21 were having continuous joint possession as owners of the suit property. It was the case of the plaintiff that out of the suit properties, the properties mentioned at Sr. Nos.3 and 4 i.e. Survey No.107 Hissa No.1B, Survey No.246 Hissa No.1C were transferred by the defendant no.1 in favour of the defendant no.22 illegally. The property mentioned at Sr.No.5 i.e.Survey No.246 Hissa No.1D was transferred by the defendant no.1 in favour of the defendant no.23 illegally and the property mentioned at Sr.No.6 i.e. Survey No.24 Hissa No.1 was transferred by the defendant no.1 in favour of the defendant no.24 illegally. The plaintiff demanded partition of the suit property in the month of January 2001. At that time, the defendant no.1 threatened him that he would sell the suit property and would carry out construction in the property and cut the standing trees.

5. The plaintiff accordingly filed a suit (Regular Civil Suit No.80 of 2001) for partition and separate possession. The defendant no.1 resisted the suit by filing a written statement contending that there was no cause of action for filing the said suit. It was alleged that the suit property was in exclusive possession of the defendant no.1 and the suit property was given to the deceased Pundalik Ramchandra Sawant by his father-in-law. It was alleged that the said Pundalik was the exclusive owner of the suit property. The plaintiff and the defendant nos.2 to 21 had never entered in the suit property. It was alleged that the defendant nos.2 to 21 and the plaintiff had no right or interest of any nature whatsoever in the suit property. It was the case of the defendant no.1 that the said Pundalik executed a consent deed/Will on 23rd January

1994 and completed it on 27th February 1994 and by that consent deed transferred the property in the name of the defendant no.1.

6. The defendant no.1 claims to be in possession of the suit property. It was the case of the defendant no.1 that after demise of the said Pundalik, the defendant no.1 became exclusive owner of the suit property. His name was recorded as the legal heir of the said Pundalik in the revenue record. It was the case of the defendant no.1 that the suit property was devolved upon the said Pundalik by his father-in-law and the said property was not the ancestral property of Pundalik.

7. The defendant nos.2, 4, 5 and 22 failed to file their written statement. The defendant nos.6 to 9, 13 and 19 to 21 also failed to file their written statement. The defendant nos.3, 10 to 12, 15 to 18 and 25 though were duly served did not appear, thus the suit proceeded ex-parte against them. The defendant no.23 filed his written statement and denied the allegations made by the plaintiff in toto. It was the case of the defendant no.23 that he had purchased the suit property bearing Survey No.246 Hissa No.2B by a registered sale deed dated 28th November 2000 and since then he was in possession of the suit property.

8. The defendant no.24 also filed separate written statement resisting the claim made by the plaintiff. It was the case of the defendant no.24 that the suit land bearing Survey No.247 Hissa No.1 was originally owned by Babu Sitaram Rawool. He was the father-in-law of deceased Pundalik Ramchandra Sawant. On 28th May 1958, the said Babu Sitaram Rawool had transferred the properties including the property at Sr. No.6 to Pundalik Ramchandra Sawant, his son-in-law by executing a gift

deed. It was his case that on 27th February 1994, the said Pundalik transferred his properties mentioned at Sr. Nos.1, 2, 3 and 6 in favour of Ramchandra by Will deed.

9. On 25th May 2000, the defendant no.1 executed a registered sale deed in favour of one Sheetal Dangi. The said Sheetal Dangi thereafter transferred the suit property bearing Survey No.247 Hissa No.1 in favour of the defendant no.24 by executing a registered sale deed dated 28th November 2000 for consideration of Rs.35,000/-. It was the case of the defendant no.24 that the defendant no.24 had purchased the property from the defendant no.22.

10. The learned trial Judge framed nine issues for determination. The plaintiff examined himself and produced various documents. The defendant no.1 examined himself, Mr.Narayan Jiji Sawant and Sharad Krishna Mistry and produced on record the alleged consent deed/Will deed and other documents. The defendant no.22 examined Sheetal Dangi and two other witnesses. The defendant no.23 examined himself and one more witness. The defendant no.24 examined herself as a witness.

11. The learned trial Judge held that the plaintiff had failed to prove that the suit lands were joint Hindu family properties and that the plaintiff was having 1/5th share in the suit lands. It is held that the plaintiff had also failed to prove that the sale deed executed by the defendant no.1 in favour of the defendant nos.22 to 24 was not binding on his share. It is held that the defendant no.1 had failed to prove that the said Pundalik Ramchandra Sawant had executed a Will deed on 27th

February 1994 in his favour. It is held that the defendant no.1 had proved that the other joint Hindu family properties situated at Kankavali were not made the subject matter of the suit and thus the suit was not tenable. The learned trial Judge held that the plaintiff was not entitled for the partition and separate possession as prayed. On 10th March 2008, the learned trial Judge accordingly dismissed the said Regular Civil Suit No.80 of 2001.

12. Being aggrieved by the said judgment and decree dated 10th March 2008, the original plaintiff filed Regular Civil Appeal No.66 of 2008 in the Court of the learned Principal District Court, Sindhudurg at Oros. The learned Principal District Judge, Sindhudurg formulated eight points for determination and passed a judgment and decree dated 13th August 2013 thereby allowing the said Regular Civil Appeal No.66 of 2008 filed by the plaintiff and was pleased to set aside the decree passed by the learned trial Court in Regular Civil Suit No.80 of 2001 and passed a decree declaring the share of the plaintiff, the defendant nos.17 to 21, the defendant nos.1 to 5 and the defendant nos.12 to 15 in the suit properties. By the said judgment and decree, the first appellate Court ordered partition and delivery of separate possession of respective shares of the parties and further declared that the sale deeds of the suit lands executed by the defendant no.1 in favour of the defendant nos.22 to 24 were not binding on the share of the plaintiff and the defendant nos.17 to 21.

13. Being aggrieved by the said judgment and decree dated 13th August 2013, the original defendant no.22 filed this Second Appeal

No.17 of 2014 and the original defendant nos.1 to 5 filed Second Appeal No.492 of 2016.

14. Mr.Prabhu, learned counsel appearing for the appellant (original defendant no.22) invited my attention to the findings recorded by the learned trial Judge while dismissing the suit for partition filed by the original plaintiff. He submits that the learned trial Judge has rightly held that the suit property belonged to the said Pundalik Ramchandra Sawant who by a Will deed prepared under the consent Will of the said deceased Pundalik transferred the said property in favour of the defendant no.1. He submits that the learned trial Judge has rightly held that the plaintiff had failed to prove that after demise of the Pundalik, he and the defendant no.22 became joint owners of the suit property. He submits that the plaintiff had failed to prove that the suit property was joint Hindu family property and was liable to be partitioned. He submits that the learned trial Judge has rightly held that the plaintiff was not entitled to seek a declaration that the sale deed executed by the defendant no.1 in favour of the defendant nos.22 to 24 was illegal.

15. It is submitted by the learned counsel for the defendant no.22 that since the property was rightly transferred by Will in favour of the defendant no.1 who had become owner of the suit property, he had rightly executed a sale deed in respect thereof in favour of the defendant nos.22 to 24.

16. It is submitted by the learned counsel for the defendant no.22 that the first appellate Court, however without appreciating the

evidence led by both the parties, has erroneously allowed the appeal filed by the plaintiff and reversed the decree passed by the learned trial Judge contrary to the fact and law.

17. Learned counsel for the appellants (original defendant nos.1 to 5) in Second Appeal No.493 of 2016 invited my attention to the findings recorded by the two Courts below and heavily placed reliance on the findings of facts rendered by the learned trial Judge. He submits that the said Pundalik was given the suit properties by his father-in-law who was the actual owner. He submits that Pundalik had executed a Will and had bequeathed the suit properties in favour of the defendant no.1 who became exclusive owner of the said suit properties. He submits that the defendant no.1 had executed a separate sale deed in favour of the defendant nos.22 to 24. He submits that the witnesses examined by the defendant no.1 had proved the execution and contents of the Will executed by Pundalik thereby bequeathing the said properties in favour of the defendant no.1. He submits that the first appellate Court reversed the decree without considering the oral and documentary evidence which were appreciated by the learned trial Judge.

18. Learned counsel for the plaintiff, on the other hand, submits that the witness examined by the defendant no.1 could not prove the execution and contents of the Will alleged to have been executed by Pundalik. He submits that the suit properties were the joint properties of the plaintiff and defendant nos.1 to 21 which was proved by leading oral and documentary evidence by the plaintiff. He submits that the said Pundalik had right, title and interest in the suit properties. He did not

execute any alleged Will in favour of the defendant no.1. He submits that the defendant no.1 did not get any right, title and interest of any nature whatsoever in the suit properties and consequently, the alleged sale deed in favour of the defendant no.22 to 24 could not have been executed and would not confer any title upon those defendants. It is submitted by the learned counsel that the first appellate Court has rightly appreciated the oral as well as the documentary evidence led by the plaintiff and the contesting defendants and has rightly reversed the erroneous judgment and decree passed by the learned trial Judge. He submits that the findings rendered by the first appellate Court being not perverse cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908.

19. A perusal of the impugned judgment and decree passed by the learned trial Judge indicates that the learned trial Judge has rendered various findings by adopting casual approach and without properly appreciating the oral evidence led by the parties.

20. The first appellate Court considered an undisputed fact that the suit property was a separate property of Pundalik Ramchandra Sawant who was paternal uncle of the plaintiff and the defendant nos.1 to 15 and 17 to 21. Wife of the said Pundalik Ramchandra Sawant pre-deceased him. Admittedly the said Pundalik had no issue when he died on 19th October 1996. It is held that after death of Pundalik, the property was inherited by the plaintiff and the defendant nos.1 to 15 and 17 to 21 as their separate joint property. The first appellate Court also considered the cross-examination of the defendant no.1 who admitted the

relationship of the plaintiff and the defendant nos.1 to 21 with Pundalik Ramchandra Sawant. There was no dispute between the parties that the plaintiff and the defendant nos.1 to 21 were the only surviving legal heirs of late Pundalik Ramchandra Sawant.

21. In so far as the defendant no.1 is concerned, he had claimed his alleged rights in the suit property based on an alleged last Will dated 27th February 1994 in his favour by the said Pundalik Ramchandra Sawant. The first appellate Court considered the issue whether the alleged Will dated 27th February 1994 had been executed by the said Pundalik or not in detail. The defendant no.1 had entered the witness box and deposed that on 27th February 1994, the said Pundalik Ramchandra Sawant had prepared his consent letter/Will and had handed over the same to the defendant no.1. The first appellate Court held that that the impugned Will of Pundalik Ramchandra Sawant was not executed in presence of the defendant Ramchandra Ganpat Sawant (DW-1). The first appellate Court held that the defendant no.1 had examined two witnesses namely Narayan Jiji Sawant and Sharad Krishna Mistry who claimed that in their presence on 27th February 1994, at the residence of the said Pundalik, the said Pundalik had signed the alleged Will, however in their cross-examination, they could not hide their falsity in their testimony. The said Sharad Krishna Mistry was the husband of the defendant no.24 Shobha Mistry who was one of the alleged purchaser of the suit property. The said Shobha Sharad Mistry used to work as maid-servant in the house of Pundalik Ramchandra Sawant and alleged to have purchased the suit property.

22. It is held by the first appellate Court that from the evidence of Ullhas Dangi (DW-4), it emerges that his wife though purchased some of the suit property from the defendant no.1, she had no separate source of income. After considering the oral and documentary evidence, it is held that the purchase of one of the suit properties by Shobha Dangi from the defendant no.1 and subsequently within few days, sale of the same property to the defendant no.24 who was the wife of Sharad Mistry clearly indicated that probability of falsely signing the impugned Will as attesting witness by Sharad Mistry as consideration for obtaining sham sale deed of one suit property from the defendant no.1 in the name of wife of Sharad Mistry.

23. After considering the oral evidence of various witnesses examined by both the parties, the first appellate Court in paragraphs 12 to 20 rightly held that none of the witnesses examined by the defendant no.1 could prove that the said Pundalik had executed a Will on 27th February 1994. Various witnesses examined by the defendant no.1 in their cross-examination made various admissions and deposed contrary to their depositions made in the examination-in-chief. The first appellate Court rightly held that under the impugned Will, the defendant no.1 could not acquire any ownership right in the suit property and that the defendant no.1 had failed to prove that the said Pundalik Ramchandra Sawant had executed any alleged Will and had bequeathed the suit property in favour of the defendant no.1. The first appellate Court rightly held that the defendant no.1 was not the absolute owner of the suit property. It is held that the status of the plaintiff, defendant nos.1 to 15 and 17 to 21 was as co-owners of the suit property as his Class-II legal heirs.

24. A perusal of the record indicates that the first appellate Court rightly rendered a finding that the plaintiff and the defendant nos.1 to 17 were entitled to partition and separate possession for their joint shares as determined. In my view, since the defendant no.1 did not have any ownership rights in the suit property, the first appellate Court rightly held that the sale deeds executed by the defendant no.1 in favour of the defendant nos.22 to 24 were not binding on the share of the plaintiff and the defendant nos.17 to 21.

25. I have heard the learned counsel for the parties at length and have considered the findings of the two Courts below minutely. In my view, the findings recorded by the learned trial Judge were overlooking the oral and documentary evidence led by both the parties and are erroneous. The first appellate Court has rightly appreciated the oral and documentary evidence and has rightly reversed the findings recorded by the learned trial Judge. In my view, there is no infirmity with the judgment and decree passed by the first appellate Court on 13th August 2013. In my view, both these appeals are devoid of merits. No substantial question of law arises in these appeals.

25. I therefore pass the following order :-

- (i) Second Appeal Nos.17 of 2014 and 493 of 2016 are dismissed;
- (ii) In view of dismissal of the second appeals, pending civil applications for stay filed by the appellants do not survive and are accordingly dismissed;
- (iii) There shall be no order as to costs.

R.D. DHANUKA, J.