

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

**SECOND APPEAL NO. 393 OF 2012
(Hari s/o Deochand Sapkale Vs. Tukaram s/o Deochand
Sapkale)**

Mrs. M.L. Sangeet, Advocate for the appellant
Mr. A.J. Talhar, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 19th JULY, 2017

ORAL ORDER :

Heard the learned counsel for the parties.

2. The appellant has challenged the judgment and decree dated 5th November, 2011 in Regular Civil Appeal No.201 of 2004 passed by the learned District Judge-2, Jalgaon, by which the Judgment and decree dated 4th August, 2004 passed in Regular Civil Suit No. 340 of 1998 by the learned Joint Civil Judge, Junior Division, Jalgaon, which has been confirmed.

3. The appellant and the respondent are the real brothers. They jointly purchased the agricultural land bearing Block No.35 admeasuring 2 H 87 Ares for a consideration of Rs.2,00,000/- by way of registered Sale Deed on 2nd July, 1990. According to the respondent, he paid Rs.1,75,000/-, while the appellant paid Rs.25,000/-

and therefore, the respondent is entitled to have 14 Ana share while appellant was entitled to get 2 Ana share in the suit land. Accordingly, the respondent filed a suit seeking partition of the suit land and claimed for separate possession of his 14 Ana share therein. The appellant set up counter claim contending that he has half share in the suit land and, accordingly, he claimed half share therein. The trial Court as well as the First Appellate Court accepted the case of the respondent and declared that he has 1/8 share in the suit land.

4. The learned counsel for the appellant submits that there is no recital in the sale deed about the proportion of shares of the parties in the disputed land. As a matter of fact, the appellant has paid 50% of the price of the land and he is entitled to get half share therein.

5. As against this, the learned counsel for the respondent submits that there is sufficient evidence on record to show that the respondent paid the amount of Rs.1,75,000/-, while the appellant paid Rs.25,000/- for purchasing the suit land and therefore, the judgment of the Trial Court and the First Appellate Court would not

call for any interference.

6. Admittedly, the appellant is a co-owner of the suit land. There is no recital in the sale deed specifying the shares of the appellant and the respondent in the suit land. There is no written document specifying their shares therein. Therefore, it will have to be considered on the basis of legal position as to how the shares of the appellant and respondent can be determined in the land purchased by them jointly. This substantial question of law has not been considered by the Trial Court and the First Appellate Court. I, therefore, formulate the following substantial question of law:-

“Whether the appellant has a right to have half share in the suit land as co-purchaser thereof, in the absence of recital in the sale deed or any separate agreement specifying the shares of the appellant and the respondent ?

7. **Admit** the appeal.

8. On admission of the appeal, the learned counsel Mr.Talhar, waives service of notice on behalf of the respondent.

9. The appellant shall prepare private paper-book and file the same in this Court. The appellant shall supply the copy of the paper-book to the respondent.

10. Print of the paper-book is dispensed with.

11. Since the Second Appeal is admitted, the execution of the impugned decree will have to be stayed and it is accordingly stayed, until final decision of the appeal. Inform the Trial Court accordingly.

12. The Civil Application No.6895 of 2012 is disposed of accordingly.

Sd/-

[**SANGITRAO S. PATIL**]

JUDGE

sam/sa393-2012