

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

SECOND APPEAL NO. 715 OF 1991

Rajaram Rambhau Pansare,	]	
Indian Inhabitant, aged 32 years,	]	
Residing at Kale, Taluka Junnar,	]	
District Pune	]	<u>... Appellant.</u>

Versus

- | | | | |
|----|---------------------------------------|---|--|
| 1. | Sundarabai w/o. Vishnu Matele, |] | |
| | Aged about 40 years, Occupation |] | |
| | Household work, residing at Surale, |] | |
| | Taluka Junnar, P.O. Surale, |] | |
| | District Pune. |] | |
| 2. | Bhagubai w/o. Rambhau Pansare, |] | |
| | [Deleted] |] | |
| 3. | Bhaguji Ranuji Pansare, |] | |
| | Since deceased by his heirs and |] | |
| | legal Representatives |] | |
| | 3(a) Smt.Jaibai Bhaguji Pansare |] | |
| | 3(b) Baban Bhaguji Pansare |] | |
| | 3(c) Santosh Bhaguji Pansare |] | |
| | 3(d) Smt.Hausabai Dattatraya Chavan |] | |
| | Nos.3(a) to 3(d) residing at Kale, |] | |
| | Post Tambe, Taluka Junnar, |] | |
| | District Pune. |] | |
| 4. | Pandurang Rambhau Pansare, |] | |
| | aged about 35 years. |] | |
| 5. | Gulab Rambhau Pansare, |] | |
| | aged about 28 years. |] | |
| 6. | Dattatraya Rambhau Pansare, |] | |
| | aged about 20 years, |] | |
| | R. Nos.2 to 6 Agriculturists, |] | |
| | Residing at Kale, Taluka Junnar, |] | |
| | P.O. Tambe, Taluka Junnar, Dist.Pune. |] | |

7. Bhimabai w/o. Maruti Durafe,]
 aged about 52 years, Occupation]
 Household work, Residing at Kusur,]
 Taluka Junnar, P.O. Kusur,]
 District Pune.]
8. Sau.Savitribai w/o. Deoram Gund]
 Since deceased by heirs and]
 Legal Representatives,]
 a) Deoram Laxman Gund, [**Deleted**]]
 b) Janardan Deoram Gund, Age 42 years,]
 c) Baban Deoram Gund, Age 38 years,]
 d) Chandrakant Deoram Gund,]
 Age 35 years]
 e) Vanasree alias Vanita Sadashiv]
 Pansare,]
 All residing at Kale, Taluka Junnar,]
 District Pune.] **... Respondents.**

**WITH
SECOND APPEAL NO. 713 OF 1991**

Dashrath Ranoji Pansare,]
 Indian Inhabitant,]
 Residing at Kale, Taluka Junnar,]
 District Pune] **... Appellant.**

Versus

1. Rambhau Ranoji Pansare,]
 Since deceased by his heirs:-]
 (a) Bhagubai widow of Rambhau Pansare]
[Abated]]
 (b) Pandurang Rambhau Pansare,]
 Adult, Occupation Service,]
 Residing at Mangaldas Market,]
 1st floor, 8th Lane, Bombay- 400 002.]
 (c) Ushatai Pandurang Pansare,]
 Adult, Occupation Agriculturist.]
 (d) Rajaram Rambhau Pansare,]
 Adult, Occupation Agriculturist,]

- | | | |
|--|---|-------------------------|
| (e) Gulab Rambhau Pansare, |] | |
| Adult, Occupation Service, |] | |
| Residing at C/o. Nana Docks, |] | |
| Kolaba, Bombay. |] | |
| (f) Dattatraya Rambhau Pansare, |] | |
| Adult, Occupation Fruitvendor & |] | |
| Agriculturist, Mahatma Phule |] | |
| Crowford Market, Bombay. |] | |
| 2. Savitribai Deoram Gund |] | |
| Since deceased through LRs. |] | |
| 2(a) Deoram Laxman Gund [Deleted] |] | |
| 2(b) Janardan Deoram Gund |] | |
| Age 42 years, |] | |
| 2(c) Baban Deoram Gund |] | |
| Age 38 years, |] | |
| 2(d) Chanrakant Deoram Gund, |] | |
| Age 42 years, |] | |
| 2(e) Vanashree @ Vanita Sadashiv |] | |
| Pansare, Age 32 years, |] | |
| 3. Devram Laxman Gund [Abated] |] | <u>... Respondents.</u> |

- Mr.Rajiv Patil, Senior Advocate a/w. Mr.Onkar Warange for the Appellant.
- Mr.V.S. Gokhale for Respondent Nos.7, 8(b) to 8(e) in SA/715/1991 and for Respondent Nos.2(b), 2(c), 2(d) and 3 in SA/713/1991.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 6th JUNE, 2018.

ORAL JUDGMENT :

1] Both these appeals are arising between the same parties and involve the common questions of fact and law. Hence, they are decided by this common judgment.

2] Second Appeal No.713 of 1991 is arising out of the judgment and order dated 23/02/1984 in Regular Civil Appeal No.165 of 1982; whereas Second Appeal No.715 of 1991 is against the judgment and order dated 24/02/1984 in Civil Appeal No.178 of 1982.

3] Regular Civil Appeal No.178 of 1982 was arising out of the judgment and decree dated 26/02/1982 passed by the Civil Judge, Junior Division, Junnar, in Regular Civil Suit No.89 of 1973; whereas Regular Civil Appeal No.165 of 1982 was arising out of the judgment and decree passed by the same Court on 26/02/1982 in the Regular Civil Suit No.31 of 1973.

4] The suit bearing Regular Civil Suit No.31 of 1973 was filed by Legal heirs of deceased Rambhau Ranoji Pansare seeking the relief of perpetual injunction restraining the defendants therein, namely, Savitribai and her husband Devram, from causing obstruction to their possession in the suit land bearing Survey No.186/a-A admeasuring 30R situated at village Kale, Taluka Junnar, District Pune, claiming that deceased Rambhau has purchased the said land on 12/06/1973 from one Sundarabai w/o.Vishnu Matele for a consideration of Rs.3,000/- and Sundarabai was the exclusive owner and in possession of the said land. It was their case that on the basis of the said sale-

deed, Rambhau has become the exclusive owner and possessor of the said land.

5] This suit was resisted by defendant Nos.1 and 2 therein contending that Sundarabai was not the exclusive owner of the said land but it was belonging jointly to all the three sisters viz.Sundarabai, Bhimabai and Savitribai, after the death of their mother Chandrabhagabai. It was also contended that Sundarabai was never in possession of the suit land.

6] At the same time, Bhimabai has also filed the suit bearing Regular Civil Suit No.89 of 1973 for partition and separate possession of her 1/3rd share in the said land stating that the said land was belonging to her mother Chandrabhagabai Gopala Pansare, who has died on 18/06/1965 leaving behind her three daughters i.e. Bhimabai, Sundarabbai and Savitribai. It was stated that though in the Revenue Record, the name of Sundarabai alone was entered, she was not the exclusive owner thereof. The land belongs to all the three sisters jointly and therefore, Sundarabai has no right or title to sell the said land to Rambhau Ranuji Pansare and hence, the said sale-deed is not binding on the shares of the remaining two sisters. Therefore, she is entitled to get her 1/3rd share in the suit land by partition and have the separate possession.

7] In support of their respective claims, the parties have examined themselves and the trial Court was, vide its separate judgments and decrees, pleased to hold that, merely on the basis of the entry in the Revenue Record, Sundarabai cannot claim herself to be the exclusive owner and in exclusive possession of the said land. As the land was owned by their mother Chandrabhagabai, after her death, all the three sisters are having 1/3rd share therein and hence, Bhimabai was entitled to get 1/3rd share separated in partition decree. As a result, her suit came to be decreed; whereas the suit filed by Rambhau Ramoji Pansare for injunction came to be dismissed on the ground that he has not received any right, title or possession, when Sundarabai herself was not having such exclusive ownership or possession over the suit land.

8] These findings of the trial Court were confirmed by the Appellate Court in two separate appeals preferred by the present Appellants. Hence, being aggrieved thereby, these two Second Appeals are preferred.

9] In Second Appeal No.713 of 1991, the only substantial question of law which is framed at the time of admission is, *“whether Rambhau Ranoji Pansare can claim protection under Section 41 of the*

Transfer of Property Act and if so, whether decree for partition can be granted in such case?”

10] Whereas in Second Appeal No.715 of 1995 the only substantial question of law framed was, *“whether the Plaintiff and Defendant No.3 have relinquished their share in the suit land?”*

11] While challenging this concurrent finding of fact recorded by the Courts below, the entire reliance of learned counsel for the Appellant is on the statement of Bhimabai and Savitribai, which was recorded before the Revenue Authority on 01/07/1965 and in which both of them had stated that the suit land was belonging to their mother Chandrabhagabai, who has expired on 18/06/1965. Chandrabhagabai had 3 daughters and all the daughters were married. Out of them Bhimabai and Savitribai were residing in their matrimonial homes; whereas Sundarabai was child widow and since last 10/12 years she was residing along with her mother Chandrabhagabai. During the old age of Chandrabhagabai, Sundarabai has taken her care and therefore, during her lifetime, their mother Chandrabhagabai has told Bhimabai and Savitribai that her lands be transferred, after her death, in the name of Sundarabai. Therefore, both Bhimabai and Savitribai had stated before the Revenue Authority that they are willingly giving a statement to

transfer the land standing in the name of their mother in the name of Sundarabai and having no objection thereto.

12] According to learned counsel for the Appellant, this statement of Bhimabai and Savitribai is more than sufficient to spell out their intention and also the intention of their mother Chandrabhagabai of transferring the suit land exclusively in the name of Sundarabai. It is urged that this statement was recorded on 01/07/1965 and on the basis thereof till the year 1973, the land was standing exclusively in the name of Sundarabai. Bhimabai and Savitribai had not challenged the said entry. They have challenged the said entry only when Sundarabai has sold the suit land to Rambhau Ranoji Pansare in the year 1973. According to learned counsel for the Appellant, therefore the trial Court and the Appellate Court have committed an error in not properly appreciating the statement of Bhimabai and Savitribai, as recorded by the Revenue Authority, making it clear that, as per the wish of their mother Chandrabhagabai, the land was exclusively given to Sundarabai and hence, she has every right to transfer the same to Rambhau Ranoji Pansare and therefore, his possession was required to be protected.

13] However, in my considered opinion, this submission would have been accepted but for the fact that that this statement made by

Bhimabai and Savitribai before the Revenue Authority, giving no objection for entering the suit land in the exclusive name of Sundarabai, does not amount to surrender or relinquishment of their share in the suit land. In fact the relinquishment, in order to have effect must be clear, unambiguous and with knowledge. Here, in the case, the statement of Bhimabai and Savitribai nowhere mentions that they had inherited the share in the suit land and they have relinquished it and Sundarabai therefore alone has become the owner of the suit land. Hence, it neither amounts to relinquishment nor constitute a transfer of the title. The law is also very well settled that the entries in the Revenue Record cannot be a proof of title. At the most, they can raise *prima-facie* presumption as to the possession but not at all that of the transfer of title. Moreover, it is pertinent to note that Sundarabai herself has not stated anything about the desire and intention of her mother of transferring the suit land in her name exclusively on the count that she has looked after her mother in the old age. Her evidence is conspicuously silent about the same, as observed by the Appellate Court. In the written statement, there is only a vague averment that an application was given to the Revenue Authority for relinquishing the ownership right over the suit land. However, there is no evidence to show that there was actual surrender of the said right or there was any document to that effect entered into

between the parties.

14] The statement thus made before the Revenue Authority also does not make out clearly the story of the oral surrender or of relinquishment in the said property.

15] Except for the statement made before the Revenue Authority, there is no other document to show that Bhimabai and Savitribai had relinquished their share in the suit land in favour of Sundarabai. In such situation, in the absence of a clear unambiguous and unequivocal surrender, it becomes difficult to accept that on the basis of this statement alone, Sundarabai has become the exclusive owner of the suit property. As admittedly, the suit land was belonging to Chandrabhagabai, after the death of Chandrabhagabai, it has to be held that all the three daughters of Chandrabhagabai have received 1/3rd share each therein. The appreciation of the oral and documentary evidence on this point of relinquishment, done by the trial Court and confirmed by the Appellate Court cannot be disturbed in the Second Appeal.

16] Even as to the question whether Rambhau Ranoji Pansare can claim protection under Section 41 of the Transfer of Property Act as he has purchased the said property from ostensible owner, as

observed by the trial Court and the Appellate Court, as per Section 41 of the Transfer of Property Act such transferee has to establish that he has acted in good faith, after taking reasonable care. In this case, Rambhau has not entered into the witness box to prove that he has made reasonable enquiries. Moreover, when Rambhau was admittedly related to the parties, it follows that he was aware that Bhimabai and Savitribai were also having share in the suit property. He has not made enquiries with them even when there was no document showing that they had actually relinquished their share in the said property. Mere transfer of Khata cannot give a proof of title. Hence, it has to be held that he has not made requisite enquiry and not taken proper care and caution expected of a prudent person. Both the Courts below have therefore rightly held that he would not be entitled to get protection under Section 41 of the Transfer of Property Act.

17] In view thereof, the judgments in both the suits, as delivered by the trial Court and confirmed by the Appellate Court, do not call for any interference, as the findings arrived at and confirmed therein are based on proper appreciation of evidence on record. No substantial question of law is involved therein as such. Therefore, both the Second Appeals stand dismissed.

18] The parties to bear their own costs.

[DR.SHALINI PHANSALKAR-JOSHI, J.]