

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

**SECOND APPEAL NO. 269 OF 2017
WITH
CIVIL APPLICATION NO. 583 OF 2017
IN
SECOND APPEAL NO. 269 OF 2017**

Shri Savalaram Gajanan Patil. ... Appellant/Applicant

V/s.

Shri Shama Gajanan Patil & ors. ... Respondents

**WITH
CIVIL APPLICATION NO. 622 OF 2019
WITH
CIVIL APPLICATION NO. 1338 OF 2019
IN
SECOND APPEAL NO. 269 OF 2017**

Shri Shama Gajanan Patil & ors. ... Applicant.

v/s.

Shri Savalaram Gajanan Patil. ... Respondent.

Ms. Anjali Neel Helekar a/w. Ms. Anu C. Kaladharan, advocate for the appellant.

Mr. G.S. Godbole i/b. Mr. Sanjay S. Patil, advocate for respondent.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : MARCH 2, 2020.

P.C. :

1 The Appellant is the plaintiff in RCS No. 31 of 2007. The suit was for partition and separate possession and mesne profit and injunction. The defendant no. 1 happens to be the brother of the appellant, whereas the defendant Nos. 2, 3 and 4 happen to be the

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legal heirs of the brother of the appellant deceased Balu Gajanan Patil. The defendant No. 5 happens to be the wife of the deceased Balu Gajanan Patil. The suit was dismissed by Judgment and Order dated 28/4/2014.

2 Being aggrieved by the said Judgment and Order, the appellant herein had preferred Civil Appeal No. 184 of 2014 before the District Judge, at Thane. The said appeal was dismissed by Judgment and order dated 5/7/2016. Hence, this Second Appeal under section 100 of the Civil Procedure Code, 1908.

3 It is the case of the appellant that the suit properties are joint family properties. However, some properties are purchased in the name of defendant No. 1 from the nucleus of the joint family properties. That, after the demise of father of the plaintiff and defendant No. 1, their mother Yamunabail Patil was cultivating agricultural land at village Jambivali as an agricultural tenant and the same are mutated at Mutation Entry No. 133. That the plaintiff and husband of defendant No. 5 were in service and were therefore, not residing in the village. That the defendant No. 1 was the Karta of joint Hindu Family properties. However, in the revenue records he has shown himself as absolute owner of the properties. According to the plaintiff, the defendant No. 1 was a minor, when tenancy land was sold in the name of defendant No. 1, whereas the plaintiff and defendant No. 3 were minors. That they are not the self acquired

properties of the defendant No. 1. That the defendant No. 1 has received the compensation from Government for acquisition of lands for Bhatsa canal. According to the defendants, those are self acquired properties. That the lands situated at Kinvali were owned by Nathu Vishnu Joshi and that the defendant was cultivating land as an agricultural tenant.

4 Certificate under section 32 M of the Bombay Tenancy and Agricultural Land Act was issued in the name of defendant No. 1 in respect of the land situated at village Jambhivali. The father of the plaintiff and defendant No. 1 had sold the agricultural land at village Kirawali by way of registered sale deed in favour of Chandrabhagabai Mukund Patil. According to the defendant No. 1, he was working as an agricultural tenant in the land of Chandrabhagabai Patil and therefore, certificate under section 32 M of the Bombay Tenancy and Agricultural Land Act was issued.

5 The learned Appellate Court has observed that the plaintiff and the heirs of the deceased Balu Patil had challenged the mutation entry in respect of the land situated at Jambhivali under section 32 G of the Act. An inquiry was conducted by the revenue authorities. The application filed by the plaintiff was allowed. The defendant No. 1 had filed revision challenging the said order and the same was also rejected. The decision therefore, that Yamunabail Patil was the tenant 15/4/1957 was confirmed. The appeal was allowed by

Judgment and Order dated 5/7/2016 and the decree was passed. A special inquiry was directed under Order XX Rule 12 of the Code of Civil Procedure, 1908.

6 Substantial question of law according to the learned Counsel for the appellant is that -

(i) Whether it was gross error to hold that suit property is a joint family property when the present Appellant was working as agricultural tenant and present Respondent No. 1 and late Mr. Balu Patil were doing service at outer place ?

(ii) Whether the learned Appellate Court failed to consider that burden of proof regarding nucleus was sufficiently discharged by the respondents ?

7 It was the case of the defendant No. 1 that defendant/ present appellant was working as a tenant bearing Survey No. 23(3), 16(4), 31(6), 24(13) and 24(14). It is a matter of record that the properties were mutated in the name of Yamunabai i.e. mother of the appellant by Mutation Entry No. 218.

8 The learned Appellate Court has rightly observed that the father of the plaintiff and the defendant No. 1 has expired in the year 1951 and at that relevant time, present appellant was hardly 10 to 11 years old and therefore, there was no question of declaring

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minors as tenant of the said land. The revenue authorities had allowed the revenue entries in favour of the original plaintiff. It was not denied by the appellant that he had received the compensation from Government for acquisition of Land. However, receipt of compensation could not be a ground to hold that present appellant is the exclusive owner of the suit properties or that he had purchased the said properties.

9 The witnesses examined by the plaintiff have specifically stated that the properties are joint family properties. The defendant No. 1 has also stated that besides agricultural land, they also have joint house properties and they are jointly owned by the plaintiff and the defendant. The witness examined by the present appellant has admitted that he has no material or documentary evidence to indicate that Savalaram was tenant of his mother Chandrabhagabai. The said witness has also stated that the affidavit filed on his behalf is prepared by the advocate as per the instructions of the defendant No. 1.

10 The order passed by the Revenue Authorities would be sufficient to hold that the plaintiff, defendants and the legal heirs of the deceased Balu were the legal heirs of the deceased Yamunabai, who was shown as the tenant of the said properties. The income received from the properties at Jambhivali would form the nucleus to purchase other suit properties by defendant No. 1 in his own name

and other members of the joint family. However, he has misused his status as Karta of Joint Family. The defendant/present appellant had failed to establish known source of income from which he could independently purchase new properties. There is no material on record to show that they are self-acquired properties. It is clear that the properties were purchased from the nucleus of the Joint family properties. Both the issues are answered accordingly. Substantial questions of law do not survive.

11 Hence, Second Appeal stands dismissed and disposed of accordingly.

12 In view of disposal of the Second Appeal, all the Civil Applications are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)