

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

SECOND APPEAL NO.722 OF 2012

Uttam Rabhaji Gore

= APPELLANT
(Orig.deft.No.1)

VERSUS

1. Bhausahab Kisan Gore & Ors.

= RESPONDENT/S
(Resp.Nos. 1 to 8 are
orig.Plaintiffs and
Resp.Nos. 9 & 10 are
orig.deft.Nos. 2 & 3)

Mr. NV Gaware, Advocate for Appellant;

Mr. VS Bedre, Advocate for Respondent Nos. 1 to 8.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 17th August, 2021.

PER COURT :-

1. Heard learned Advocate appearing for respective parties. In order to cut short it can be stated that both of them have made submissions in support of their respective contentions.

2. Present appeal has been filed by original defendant No.1, challenging concurrent judgment and decree passed by the Courts below. Present Respondent Nos.1 to 8 are the original plaintiffs, who had filed Regular Civil Suit No.240/2007 before the Civil Judge, Senior Division, Shrigonda, District Ahmednagar for declaration and perpetual

injunction. The said suit came to be decreed on 5.3.2009. Present appellant (original deft.No.1) challenged the said decree in Regular Civil Appeal No.96/2009 before the District Court, Ahmednagar. The said appeal was heard by learned District Judge-8, Ahmednagar and it was dismissed on 2.1.2012. Hence, the present Second Appeal.

3. At the outset, learned Advocate appearing for the appellant, submits that both the Courts below have not considered the facts and law properly. They failed to see that due to encumbrance of *Tagai* on the suit property, effect was not given to Mutation Entry No.1603 in the 7/12 extract. However, mutation entry No.1603 specifically shows that even the predecessor of the plaintiffs had given an application, stating that Gut No.429/5, i.e. the suit land, was already allotted to deceased – Shankar, who is predecessor of deft.No.1, about 20 years back in the partition. That means, in fact, Shankar had become an exclusive owner of the suit land; yet the plaintiffs were claiming that it was the exclusive property of their predecessor Kisan. Both the

Courts below have held that the said Mutation Entry 1603 is illegal. Therefore, substantial question of law arising in this case is, when the predecessor of the plaintiff had already accepted that in the partition the property was given to deceased Shankar, then whether the plaintiffs can still only, on the basis of some mutation entries, say that they are the owners ?

4. Per contra, learned Advocate appearing for the respondents supported the reasons given by both the Courts below.

5. It is to be noted that unless the appellant shows substantial question of law, as contemplated under Section 100 of CPC, the appeal need not be admitted. Here, as regards the facts involved in the case are that the suit property was originally belonged to one Anusayabai, who was cousin sister of Kisan and Shankar. It is also not in dispute that Anusayabai had given the suit property to Kisan. The year of giving the property by Anusayabai to Kisan has not come on record; but it is stated that there was partition amongst

Shankar and Kisan about 50 to 60 years prior to the suit. Therefore, unless it is shown by deft.No.1 that the property was received from Anusayabai to the family as such, Shankar will not have any share. It appears from the record and it is only on the basis of the mutation entries that name of Kisan has been entered when it is stated that Anusayabai gave the suit property to Kisan. However, by Mutation Entry No.1603, it was tried to be contended that Kisan had made an application, stating that, that property was given to Shankar in the partition. The defendant when now claiming the exclusive ownership, he has not produced on record the original application of Kisan. Further, if that property was given to Shankar in the partition, then it was not so reflected in the mutation entry regarding the partition between Kisan and Shankar in respect of their ancestral lands. Therefore, the fact, about giving the land exclusively to Kisan by Anusayabai, has been proved by preponderance of probabilities by the plaintiffs. Deft.No.1 has failed to prove that it was given to Shankar exclusively in the partition. There was no attempt to get the said mutation

entry corrected, which had stated that due to the encumbrance, name of Shankar has been given in the other rights column. If the fact is required to be accepted, as the deft.No.1 contends, then even name of Kisan ought to have been recorded in the other rights column for that encumbrance of *Tagai*. At no earlier point of time, prior to 2007, there was an attempt on the part of deft.No.1 to get his name mutated, who claimed that he is the grand-son of Shankar. It also appears that neither Shankar nor Rabhaji, i.e. son of Shankar and father of the present appellant, had ever made any attempt to get their name mutated to the suit property. Under such circumstance, both the Courts below have correctly and properly assessed the facts as well as law involved in the case.

6. No substantial question of law is arising in this appeal. The Second Appeal stands dismissed. Pending civil application, if any, stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE