

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 199 OF 2013

1. Smt. Renubai @ Rayajabai Wd/o.
Shankar Mutkure, Age 69 Yrs.
Occ. : Household,
 2. Gendlal S/o. Shankar Mutkure,
Age 45 Yrs. Occ. : Agriculturist,
 3. Dhanlal S/o. Shankar Mutkure,
Age 42 Yrs. Occ. : Agriculturist,
- Nos. 1 to 3 R/o. Deshbandhu Ward,
Tah. & Dist.:Bhandara, R/o.Usarala
(Bapera),Tah.: Tumsar, Dist.Bhandara.
4. Smt. Rekhabai W/o. Udelal Damahe,
Age 42 Yrs. Occ. : Household,
R/o.Usarala(Bapera),Tah.: Tumsar,
Dist.Bhandara.
 5. Smt.Sunitabai W/o. Joshiram Lilhare,
Age : 39 Yrs. Occ. : Household,
R/o.KamarGaon,Tah.: Goregaon,
Dist.: Gondia.
 6. Smt. Lalitabai W/o. Bhivraj Mahule,
Age : 38 Yrs. Occ. : Household,
R/o.Nagara, Tah.: Gondia,
Dist.Gondia.

.... **APPELLANTS.**

// **VERSUS** //

1. Namdeo S/o. Mulchand Lilhare,
Age : 48 Yrs., Occ. : Business,
2. Radheshyam S/o. Mulchand Lilhare,
Age : 43 Yrs., Occ. : Driver,
3. Sanjay S/o. Mulchand Lilhare,
Age : 39 Yrs., Occ. : Driver,

Nos. 1 to 3 R/o. Gaddatoli,
Gondiya Tah & Dist. Gondiya.

4. Smt. Chandabai Bhaulal Damahe,
Age : 45 Yrs., Occ. : Household,
5. Smt. Sangita Roshanlal Dhamale,
Age : 39 Yrs., Occ. : Household,

Nos. 4 to 5 R/o. Pandharabodi,
Tah. & Dist. Gondiya.

.... **RESPONDENTS.**

Shri D.K.Masurke, Advocate for Appellants.
Shri A.R.Wagh, Advocate for Respondents.

CORAM : **ANIL S. KILOR, J.**

DATED : **OCTOBER 28, 2021**

ORAL JUDGMENT :

1. In this appeal the challenge is raised to the judgment and decree dated 7th December 2012 passed by learned Principal District Judge, Bhandara, in Regular Civil Appeal No.42 of 2009, arising out of judgment and decree dated 27/02/2009 passed by 4th Joint Civil Judge,

Bhandara in Regular Civil Suit No. 106 of 2005, decreeing the suit filed by the respondents/plaintiffs for declaration that the Relinquishment Deed, dated 28/02/2003 filed in the suit is illegal and not binding on the plaintiffs/respondents and for injunction to restrain the defendants/appellants from disturbing the joint possession of the plaintiffs over the suit land admeasuring 0.58 HR.

2. Brief facts which are relevant for considering the controversy in the present appeal are as follows. (The parties are referred as per their status before the trial Court):

3. The plaintiffs/respondents filed a suit for declaration that the Relinquishment Deed dated 28/02/2003 is not binding on the plaintiffs and for injunction to restrain the defendants from disturbing the joint possession over the suit land admeasuring 0.58 H.R. It is the case of the plaintiffs that Chandrabhaga and defendant are the daughter and son of Ramlal Mutkure and after the death of Ramlal, Chandrabhaga and Shankar, the defendant, succeeded as heirs of land of Ramlal, situated at Kesalwada, bearing Gut No.126(old), No.133(new), area 1.33 H.R. and accordingly their names were recorded as owners of the said Gut Number in the revenue record.

4. It is the further the case of the plaintiffs that Chandrabhaga and Shankar sold 0.41 H.R. land to Prashant Charandas Bagade and Smt.Smita Pramod Bhagwat on 11/06/2002 by registered Sale Deed. Thereafter, again on 20/02/2003 they sold 0.35 H.R. land out of remaining land of Gut No.133 to same persons by way of registered Sale Deed. The remaining land 0.58 H.R. remained unsold as it is jointly belonging to them.

5. It is further the case of the plaintiffs that Chandrabhaga was a very simple illiterate village woman, she was not knowing reading and writing and Shankar being shrewd man got executed Relinquishment Deed in question in respect of remaining 0.58 H.R. land in which Chandrabhaga had half share. Since the said Relinquishment Deed was not executed in good faith, a suit was filed for declaration and injunction.

6. The learned trial Court, after considering the oral as well as documentary evidence available on record, decreed the said suit in favour of the plaintiffs and it was held that the Relinquishment Deed, dated 28/03/2003 is not binding on the plaintiffs and the defendant was restrained from interfering the joint possession of the plaintiffs

over the suit land admeasuring 0.58 H.R. vide judgment and decree dated 27/02/2009.

7. The defendants, feeling aggrieved by the said judgment and decree carried an appeal before the Principal District Judge, Bhandara vide Regular Civil Appeal No. 42 of 2009, which came to be dismissed vide impugned judgment and decree dated 07/12/2012. The said judgment and decree is under challenge in the present appeal.

8. I have heard learned counsel for the respective parties.

9. The learned counsel for the appellants submits that both the Courts below, while holding that Chandrabhagabai had not executed the Relinquishment Deed in good faith, failed to consider the evidence led by the defendants to prove otherwise. Therefore, he submits that the finding recorded by both the Courts below are without evidence and hence the findings are perverse.

10. Per contra, the learned counsel for the respondents/plaintiffs points out from both the judgments that the findings recorded by both the Courts below are based on oral as well as documentary evidence and there is no perversity as alleged by the appellants.

11. To consider the rival contentions of the parties, I have perused both the judgments of the learned trial Court as well as learned lower appellate Court and also gone through the depositions and relevant judgments cited by the learned counsel for the respondents.

12. Both the Courts below, after considering the oral as well as documentary evidence led by both the parties, have categorically held that Chandrabhagabai did not execute Relinquishment Deed, dated 28/02/2003 in question, in good faith and while holding so both the Courts have discussed the evidence available on record. In these circumstance, no perversity has been pointed out by the learned counsel for the appellants as regards the findings recorded by both the Courts below.

13. It is the case of the defendants that Chandrabhaga had executed the Relinquishment Deed in good faith and with complete knowledge.

14. The Hon'ble Supreme Court in the case of *Anil Rishi ..vs.. Gurbaksh Singh*, reported in **(2006) 5 SCC 558** has held thus:

“19. There is another aspect of the matter which should be borne in mind. A distinction exists between

a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.”

15. In the teeth of the above referred well settled principle of law, I have no hesitation to hold that no error has been committed by both the Courts below in recording the findings that the defendant has failed to prove that Chandrabhaga had executed Relinquishment Deed, dated 28/02/2003, in good faith and with complete knowledge. In that view of the matter, I do not find any substantial question of law involved in the present appeal.

Accordingly, the appeal is **dismissed**. No order as to costs.

(ANIL S. KILOR, J)