

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 SECOND APPEAL NO.63 OF 2022
WITH CA/1067/2022 IN SA/63/2022

SAHEBRAO GOPINATH RATHOD AND OTHERS
VERSUS
DIGAMBAR GOPINATH RATHOD AND ANOTHER

...

Advocate for Appellants : Mr. Chavan Sudhir K.

CORAM : MANGESH S. PATIL, J.
DATE : 12.04.2022.

PER COURT :

Heard learned advocate Mr. Chavan for the appellants.

2. None has appeared for the respondents, though served.
3. The appellants are the original plaintiffs whose suit for partition and separate possession of their shares in all the suit properties was decreed by the trial court. By the judgment and order under challenge the lower appellate court has allowed the appeal of the original defendant No. 2 Digambar and has quashed and set aside the entire judgment and decree by holding that the family had no ancestral property and that the agricultural land that was purchased in the name of defendant No. 2 Digambar was his separate property, even though the defendant No. 1 Gopinath who is the father of the rest of the parties to the suit admitted the claim of the appellants in his consenting written statement.
4. The second appeal is **admitted** on following substantial questions of law :
 - (i) Whether the lower appellate court has recorded a perverse, arbitrary and capricious finding that the suit

properties are not joint family properties even when, the defendant No. 1 Gopinath specifically admitted and even testified supporting the claim of the appellants/original plaintiffs?

(ii) Whether the lower appellate court was justified in invoking the provisions of Benami Transactions (Prohibition) Act, 1988 even when, it was not raised before the trial court and no issue to that effect was framed and even without formulating any substantial question while deciding the appeal ?

5. In view of the nature of the dispute, the parties shall not create any third party interest in any of the suit properties. It is also further directed that the execution may go on except actual delivery of possession.

6. Civil Application No. 1067/2022 is disposed of.

(MANGESH S. PATIL, J.)

mkd/-