

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

SECOND APPEAL NO. 165 OF 2023
WITH CA/3727/2023 IN SA/165/2023

KALYAN @ SURYAKANT NARHARI ATKARE
VERSUS
CHANDRAKANT NARHARI ATKARE

...
Advocate for Appellant : Mr. A.S. More

CORAM : R.M. JOSHI, J.
DATE : 21st March, 2023

PER COURT :

1. Heard.
2. This appeal is filed by the defendant challenging judgment and decree passed by the Civil Judge Senior Division, in Regular Civil Suit No. 60 of 2013 dated 19th July, 2021, and confirmation thereof by First Appellate Court in Regular Civil Appeal No. 24 of 2021, by judgment and decree dated 17th January, 2023.
3. It is the case of the plaintiff that defendant is his real brother. He further contended that his sister died leaving no other heir behind her. It is further specifically averred that there is joint family of plaintiff and defendant and no partition has taken place in respect of property specifically described in para no. 1 of the plaint. On these averments, plaintiff seek partition and separate possession of his share.

4. Defendant appeared and filed written statement, wherein, he admitted the relationship between the parties. Defendant, however, has specifically contended that plaintiff has relinquished his share in the suit property by execution of relinquishment deed at exhibit 82. Learned Trial Court has disbelieved the execution of the relinquishment deed by plaintiff after scrutinizing the evidence on record. Secondly, the document at exhibit 82 was considered not be read in evidence for the reason of non registration thereof. Trial Court has rightly taken into consideration of provisions of 17 (1) (b) of the Registration Act, which mandates the registration of the document creating or relinquishing rights into the immovable property of value of above Rs. 100/-. Trial Court has also rightly relied upon the precedent in this regard.

5. Learned counsel for the appellant states that in view of the judgment of this Court in case of *Gangadhar Pandhari Harde Versus Uttam S/o. Pandhari Harde*, **2008 (3) ALL MR 152**, present appeal deserves admission.

6. Perusal of the judgment of Gangadhar Harde (supra), indicates that the issue therein was with regard to the oral transfer by way of relinquishment. In the instant case, the defendant has come out

with the specific case about plaintiff executing relinquishing deed at exhibit 82. Admittedly, the said document is not registered. Once the defendant claims that the plaintiff has relinquished his right in suit property, he admits other rights like right, title and interest of the plaintiff.

7. Learned Trial Court and first appellate Court have rightly taken into consideration the provisions of registration act and consequence of non registration of relinquishment deed.

8. This Court finds no substantial question of law involved in the present case. Hence, Second Appeal stands dismissed.

8. Pending Civil Application also stands disposed of.

[R.M. JOSHI, J.]