

SGA

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

**SECOND APPEAL NO.449 OF 2012
WITH
CIVIL APPLICATION NO. 7568 OF 2012
IN
SECOND APPEAL NO. 449 OF 2012
WITH
CIVIL APPLICATION NO. 10366 OF 2018
IN
SECOND APPEAL NO.449 OF 2012
WITH
SECOND APPEAL NO. 102 OF 2020
WITH
CIVIL APPLICATION NO. 7570 OF 2012
IN
SECOND APPEAL NO. 102 OF 2020**

Venubai Nathrao Dahiphale
and others

... Appellants

Versus

Mathurabai Shankarrao Mundhe
(Died) through L.Rs.
1-A. Sangram Shankarrao Mundhe
and others

... Respondents

...
Mr.P.R. Katneshwarkar h/f Mr.S.A. Deshmukh – Advocate for
Appellants

Mr.Kedar Warad h/f Mr.S.V. Mundhe – Advocate for Respondent
nos.1-A to 1-C.

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**CORAM : GAURI GODSE, J.
DATE : 12th January, 2023**

PER COURT :

1. Both the second appeals are preferred by defendant nos.1 to 3 for challenging the judgment and decree by the first appellate court passed on 5th February, 2010 in Regular Civil Appeal No.2 of 2006 and Regular Civil Appeal No.5 of 2006 passed by the learned District Judge-1 at Gangakhed. Both the first appeals were arising out of judgment and decree dated 2nd December, 2005 passed by the learned 3rd Joint Civil Judge, Junior Division, Gangakhed in Regular Civil Suit No.318 of 1992.
2. Plaintiff – Mathurabai had filed suit for possession of the suit property land survey no.80/5 (gat no.430) admeasuring 2 acres 8 gunthas as well as land survey no.57/6 (gat no.325) admeasuring 2 acres and 12 gunthas situated at village Khatgaon. It is the contention of the plaintiff that defendant nos.2 and 3 had executed a registered sale deed dated 28th April, 1982. Pursuant to the sale deed she was put in possession and her name was also entered into the revenue record. It was further contended by the plaintiff that after the date of sale deed, she was cultivating the suit land, however, on the basis of false mutation entries, the plaintiff was dispossessed by defendant no.1 in the year 1992,

hence, the plaintiff filed suit for declaration of ownership on the basis of registered sale deed and prayed for recovery of possession. Initially the suit was decreed on 3rd May, 2000, however, the said decree was set aside in common judgment passed in Regular Civil Appeal No.52 of 2000 and Regular Civil Appeal No.60 of 2000 and the matter was remanded for fresh trial by allowing defendant no.1 to file written statement. After remand, defendant no.1 filed her written statement and she denied the execution of sale deed by defendant nos.2 and 3 in favour of the plaintiff. She contended that she was in possession of the suit land pursuant to the revenue entries made in her favour on the basis of partition. Defendant nos.2 and 3 filed their separate written statement and contended that the sale deed was in fact not outright sale but was executed by way of security for loan amount of Rs.4,000/- and that the plaintiff had agreed to reconvey the property after receipt of the loan amount. They further contended that possession was never handed over to the plaintiff. It was also contended that after two years, the loan was repaid, however, the plaintiff refused to reconvey the suit land.

3. Learned trial court framed issues with respect to the execution

of sale deed, the ownership of defendant no.1, possession as well as the title of defendant no.1 and her possession. The trial court after examining the evidence as well as documents on record held that the plaintiff proved her ownership with respect to survey no.80/5 admeasuring 2 acres 8 gunthas and thus decreed the suit only in respect of survey no.80/5 (gat no.430) admeasuring 2 acres 8 gunthas. Thus, the defendants were directed to hand over the possession of that part of the suit land.

4. Being aggrieved and dissatisfied by the decree of the trial court, the plaintiff filed Regular Civil Appeal No.2 of 2006 as the suit was not decreed in respect of survey no.80/5 (gat no.430). Defendant nos.1 to 3 filed Regular Civil Appeal No.5 of 2006 challenging the decree passed against the defendants for handing over possession. The first appellate court allowed the appeal filed by the plaintiff and decreed the suit of the plaintiff in its entirety and thus, defendants were directed to hand over possession of the suit property to the plaintiff. Hence defendant nos.1 to 3 have filed Second Appeal No.449 of 2012.
5. First appellate court dismissed the Regular Civil Appeal No.5 of 2006 filed by defendant nos.1 to 3 and hence the defendant

nos.1 to 3 have filed Second Appeal No.102 of 2020.

6. Learned counsel appearing for the appellants submitted that the suit land was a absolute property of defendant no.1 as she received the same by way of partition and thus in view of section 14 of the Hindu Succession Act, 1956, (“said Act of 1956”) that became an absolute property of defendant no.1. Hence, defendant nos.2 and 3 were not entitled to transfer the suit property in favour of the plaintiff. It was further submitted that the trial court have recorded a specific finding on the basis of the revenue record and held that defendant no.1 was given survey no.57/6 to the extent of 2 acres 12 gunthas by way of partition, hence the trial court rightly dismissed the suit with respect to survey no.57/6. It was further submitted that in fact on the basis of the partition that was effected, the name of the defendant no.1 was entered into 7/12 extract with respect to the suit property and thus, she was absolute owner of the property and her possession and title is protected in view of section 14 of the said Act of 1956. It was further submitted that first appellate court has reversed the finding of facts recorded by the trial court by misinterpreting the documents on record and thus the decree

of the appellate court can not be sustained in view of misappreciation of evidence on record. Thus, it was submitted that there are substantial questions of law involved in the second appeals and that requires to be considered with respect of rights of defendant no.1 in view of section 14 of the said Act of 1956. Hence appeals are required to be admitted on the said substantial questions of law.

7. Learned counsel appearing on behalf of respondent no.1 i.e. original plaintiff submits that since defendant no.1 was wife of defendant no.2, she was not coparcener and there was no question of defendant no.1 receiving the suit property by way of partition. He submitted that only on the basis of the revenue entries defendant no.1 was not entitled to claim any ownership right and hence there was no question of protection in view of section 14 of the said Act of 1956. He submits that there is no substantial question of law involved in the second appeals and hence both the second appeals deserve to be dismissed.
8. I have perused judgments of both the courts. Trial court relied upon the mutation entries and have held that defendant no.1 has received the suit property in partition and she is entitled to retain

the possession. Perusal of the issues framed by the trial court do not show that any specific issue was raised with respect to the nature of the partition pursuant to which defendant no.1 had received the share in the suit property. There is no issue framed with respect to the suit property being the absolute property of defendant no.1 in view of section 14 of the said Act of 1956. So far as, the possession on the basis of the partition in favour of defendant no.1 is concerned, even trial court has disbelieved the theory with respect to survey no.57/6 i.e. gat No.325. Except for claiming to be in possession on the basis of mutation entries, there is no specific case made out by defendant no.1 as to the nature of partition. Admittedly, defendant no.1 was not a coparcener and hence so far as the partition is concerned, it was necessary that there was specific pleadings with respect to the nature of partition under which the defendant no.1 claims to have received the suit property. There can not be any debate in respect of applicability of section 14 of the said Act of 1956 to the property, which is a property of female Hindu to be her absolute property. However, in what manner the Hindu female has acquired the property, the same is required to be specifically

pleaded and proved for claiming protection under section 14 of the said Act of 1956.

9. The fact of execution of the sale deed in respect to the suit property in favour of the plaintiff is not disputed. Though a case was sought to be made out with respect to the sale deed not being absolute sale but execution of the sale deed by way of security, nothing was shown to me with respect to the same being proved by defendant nos.2 and 3. Even in present second appeals point which was argued was with respect to applicability of section 14 of the said Act of 1956.
10. The grounds with respect to rights on the basis of section 14 of the said Act of 1956, can not be on the basis of pleading as are made by defendant no.1 in the present suit. The only reliance placed by the plaintiff is the revenue entries in her favour. There is no pleading with respect to the nature of partition and under what capacity defendant no.1 received the suit property by way of partition. The first appellate court has carefully examined the revenue entries and have recorded finding on fact that though there is mutation entries in favour of defendant no.1, there is nothing on record to show that the suit property, which was

transferred to the plaintiff by way of registered sale deed was the same portion of property which defendant no.1 received by way of partition as claimed.

11. Thus, first appellate court has accepted the submission with respect to the plaintiff being the absolute owner on the suit property on the basis of the registered sale deed and accepted the theory of plaintiff with respect to the ownership on the entire suit property. The first appellate court has after examining the evidence and documents on record have recorded the specific finding that the plaintiff proved her ownership and possession on the basis of the registered document. I do not see any illegality or infirmity in the judgment passed by the first appellate court. There is no substantial question of law involved in the second appeals. Hence both the second appeals are dismissed.

12. Pending civil applications stand disposed of.

[GAURI GODSE]
JUDGE