

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

**SECOND APPEAL NO.790 OF 2012
WITH
CIVIL APPLICATION NO.13646 OF 2012
IN SECOND APPEAL NO.790 OF 2012**

1. Parubai Madhav Wagh,
Age 73 years, Occ. Household,
2. Subhash Madhav Wagh,
Age 55 years, Occ. Agriculture,
3. Baban Madhav Wagh,
(Since deceased, through his legal heirs)
- 3-A) Nandabai Baban Wagh,
Age 45 years, Occ. Household,
- 3-B) Renukrushna Baban Wagh,
Age 27 years, Occ. Agriculture,
- 3-C) Ganesh Baban Wagh,
Age 25 years, Occ. Education
- 3-D) Swami Baban Wagh,
Age 23 years, Occ. Education
4. Dnyandeo Madhav Wagh,
Age 45 years, Occ. Agri. & Service,
All R/o. Khare Karjune, Ahmednagar
District Ahmednagar

...Appellants
(Ori. Defendants)

Versus

1. Ramdas Limbaji Wagh,
Age 49 years, Occ. Agriculture,
2. Yadav Govind Wagh,
(Since Deceased through L.Rs.)
- 2-a) Subhadrabai Yadav Wagh,
Age 65 years, Occ. Household,
R/o. As above
- 2-b) Laxman Yadav Wagh,
Age 40 years, Occ. Agriculture,
R/o. As above.

- 2-c) Dattatraya Yadav Wagh,
Age 36 years, Occ. Service,
R/o. 103 (½), Samarth Colony,
Kalewadi, Vijay Nagar,
Pimpri, Pune 17
- 2-d) Gayabai Ramesh Aajge,
Age 42 years, Occ. Household,
R/o. Valadgaon (Shirasgaon Lauki),
Tq. Yewala, District Nashik
- 2-e) Haridas Yadav Wagh,
Age 34 years, Occ. Agriculture,
R/o. Khare Karjune, Ahmednagar
District Ahmednagar
- 2-f) Ranjana Rajendra Harkal,
Age major, Occ. Household,
R/o. Near Ram Mandir,
Lenar Galli, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar
3. Tulshiram Limbaji Wagh,
Age 55 years, Occ. Agriculture,
All R/o. Khare Karjune, Ahmednagar
District Ahmednagar
4. Chandrakala Sampat Kurhe,
Age 57 years, Occ. Household,
R/o. Marhal (Bk), Tq. Sinnar,
District Nashik
5. Latabai Anandrao Chorghe,
Age 52 years, Occ. Household,
R/o. Sakuri, Tq. Malegaon,
District Nashik.
6. Shardabai Dilip Kurhe,
Age major, Occ. Household,
R/o. Marhal (Bk), Tq. Sinnar,
District Nashik
7. Muktabai Dilip Harkal,
Age 42 years, Occ. Household,
R/o. Lonargalli, Near Ram Mandir
Ward No.5, Shrirampur,
Tq. Shrirampur, District Ahmednagar
8. Aashabai Bhausahab Ingale,
- Dismissed vide Order
dated 26/06/2015
- Deleted as per
Order dated
18/12/2015

- Age 41 years, Occ. Household,
R/o. Jorve, Tq. Sangamner,
District Ahmednagar
9. Anjana Dattatraya Dhone,
Age 39 years, Occ. Household,
R/o. Lonargalli, Ahmednagar
District Ahmednagar
 10. Sulochana Mahipati Ingale,
Age major, Occ. Household,
R/o. Jorve, Tq. Sangamner,
District Ahmednagar
 11. Mirabai Nivrutti Chorghe,
Age major, Occ. Household,
R/o. Sakuri, Tq. Malegaon,
District Nashik
 12. Tarabai Kashinath Harkal,
Age major, Occ. Household,
R/o. Sakuri, Tq. Malegaon,
District Nashik
 13. Bhikaji Satva Wagh,
Age 77 years, Occ. Agriculture,
R/o. Khare Karunje,
Tq. and District Ahmednagar
 14. Laxmibai Limbaji Wagh,
Age 69 years, Occ. Household,
R/o. As above
- ... Respondents
(Ori. Plaintiffs)

...

Mr. V.D. Hon, Sr. Advocate i/b Mr. A.V. Hon, Advocate for Appellants
Mr. Mukul S. Kulkarni, Advocate h/f Mr. Sanjay V. Mundhe, Advocate
for Respondents

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CORAM : KISHORE. C. SANT, J.

RESERVED ON : 07TH SEPTEMBER, 2023
PRONOUNCED ON : 07TH NOVEMBER, 2023

ORDER :

1. This second appeal arises out of the proceedings bearing Regular Civil Suit No.554/1995, filed by respondent Nos.1

to 3 i.e. original plaintiffs, for partition and separate possession. The suit was decreed by learned 4th Joint Civil Judge, Junior Division, Ahmednagar, vide judgment and order dated 27/11/2002, holding that respondent No.1 Ramdas and respondent No.3 Tulsiram would get 1/3rd share jointly of deceased Limbaji; and respondent No.2 Yadav would get 1/3rd share and defendant Nos.1 to 4 i.e. appellant Nos.1 to 4 herein, were held entitled to get 1/3rd share jointly of deceased Madhav in the suit property i.e. 5 Guntha land in Survey No.3 and House No.304. Against this judgment, Regular Civil Appeal No.356/2002, came to be filed by the appellants / original defendant Nos.1 to 4, which was dismissed by the judgment and order dated 07/08/2012. Thus, the appellants/original defendants are before this Court.

2. Original plaintiff No.2 Yadav is now represented by his legal heirs respondent Nos.2-a to 2-f and original defendant No.3 Baban is now represented through his legal heirs appellant Nos.3-A to 3-D. Plaintiffs filed the suit mainly against defendant Nos.1 to 4 and defendant Nos.5 to 15 who are respondent Nos.4 to 14 herein, were formal parties to the suit as defendants.

3. The suit properties were originally belonging to one Govind. All the parties to the suit are heirs of deceased Govind, who died in the year 1961. Govind had three sons namely Limbaji,

Madhav and Yadav. They succeeded the property of deceased Govind and were entitled for $1/3^{\text{rd}}$ share each in the property left behind by deceased Govind. Madhav died in 1973. It is the case of plaintiffs that plaintiff Nos.1 and 3 are grandsons of deceased Govind and sons of deceased Limbaji and plaintiff No.2 is the son of deceased Govind. Defendant No.1 Parubai is wife of deceased Madhav. Defendant Nos.2, 3 and 4 are his sons. Defendant Nos.5 to 10 are the daughters of deceased Limbaji. Defendant Nos.11 to 13 are daughters of deceased Madhav. Defendant No.15 is the wife of deceased Limbaji.

4. It is the case of plaintiffs that the suit property mentioned in the plaint was ancestral property of plaintiffs and defendants. There was settlement amongst deceased Limbaji, Madhav and Yadav about the properties. In the settlement, only this suit property was allotted to one Godabai, maternal aunt of plaintiffs and defendants, for her maintenance and after death of said Godabai, the suit property was again to be transferred to plaintiffs and defendants. Godabai expired on 26/03/1995. Thereafter in the suit land Gut No.86, in the land admeasuring 54 Gunthas, plaintiffs took the crop. Defendant Nos.1 to 4 obstructed peaceful possession of plaintiffs over the suit property. The property mentioned in paragraph 1(b) of the plaint was purchased by

plaintiffs and defendants, and they were cultivating their respective shares in the said property. In the said land also, plaintiffs have right, tile and interest. In that land also, defendant Nos.1 to 4 caused obstruction to the possession of plaintiffs. In Gut No.3, there is land admeasuring 5 Gunthas, however, that is not partitioned. Thus, plaintiffs sought partition of property as described in paragraph 1(c) of the plaint.

5. It is the case of the defendant Nos.1 to 4 that partition between the parties took place in the year 1984. Thereafter, on 11/01/1989 again meeting was held in respect of some other lands. Subhash (defendant No.2) had self acquired property situated at village Gondegaon, Taluka Niphad, bearing No.247, admeasuring 7H 59R. He was having $2/3^{\text{rd}}$ share in the said property. He sold the said property and consideration amount of Rs.38,000/- was distributed amongst the parties. In the said meeting, it was further decided that $1/3^{\text{rd}}$ amount from the provident fund of Limbaji Ganpat Wagh, will be given to defendant Nos.2 to 4 - Subhash, Baban and Dnyandev. Because of the technical difficulty in said meeting, some area of Yadav and Limbaji was shown to be allotted to defendant Nos.2 to 4. It is further stated that after death of Godabai 27R land each of Limbaji and Yadav from Gut No.86/1, was allotted to children of Parubai. Thus, it is the case of defendant

Nos.1 to 4 that partition has already taken place and nothing remained to be partitioned.

6. The Trial Court framed issues and answered the same holding that plaintiffs are entitled to $\frac{2}{3}$ rd share in the suit land, in which they are in possession. They have $\frac{2}{3}$ rd share in electric motor. It was also held that plaintiffs are entitled for partition and separate possession. Plaintiff No.1 and plaintiff No.3 were held entitled to get $\frac{1}{3}$ rd share jointly of deceased Limbaji; and plaintiff No.2 Yadav was held entitled to get $\frac{1}{3}$ rd share. Defendants No.1 to 4 were held entitled to get $\frac{1}{3}$ rd share jointly of deceased Madhav in the suit property of 5 Gunthas land in Survey No.3 and House No.304. The suit was thus, decreed as stated above. Defendant Nos.1 to 4 filed R.C.A. No.356/2002 before learned Principal District Judge, Ahmednagar. By judgment and order dated 07/08/2012, the said appeal came to be dismissed and thus, this second appeal.

7. It is argued that the Courts below have not considered the case of defendants that already there was relinquishment deed at Exhibit-85 executed and partition was also effected. The Courts have not believed said partition only for the reason that it was not registered. Learned advocate for appellants criticised reasoning of the District Court that the document of partition at Exhibit-85 is not proved. Thus, it is clear that the entire case revolves around

Exhibit-85, as to whether the same be accepted as executed. If that relinquishment deed is accepted as proved, then as per the submissions of learned advocate for appellants, there was no occasion for filing the suit for partition. Learned advocate, therefore, submits that it was necessary for the Appellate Court to frame specific point in respect of this relinquishment deed. There is no specific point framed about document at Exhibit-85. He, thus, submits that the Courts below have committed an error.

8. It is argued by learned advocate for original plaintiffs that both the Courts have rightly considered that relinquishment deed is not proved. It is submitted that considering the genealogy, each son of Govind was entitled to 1/3rd share and considering that the decree is rightly passed. It is admitted that the suit properties are the ancestral properties originally owned by deceased Govind. Both the Courts have considered document at Exhibit-85. For that purpose he invited attention of this Court to paragraph No.11 of the judgment of the Trial Court and relevant paragraphs of the impugned judgment.

9. Learned advocate for appellants has placed reliance upon the following judgments:-

- (I) ***Kale and Others Vs. Deputy Director of Consolidation and Others, (1976) 3 SCC 119;***

- (II) ***K. Arumuga Velaiah Vs. P.R. Ramasamy and Another, (2022) 3 SCC 757;***
- (III) ***Rajendra Lalitkumar Agrawal Vs. Ratna Ashok Muranjan and Another, (2019) 3 SCC 378;***

10. In the case of ***Kale and Others*** (supra), the Hon'ble Apex Court has given essentials of a family settlement as below :

- "(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;*
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;*
- (3) The family arrangement may be even oral in which case no registration is necessary;*
- (4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;*
- (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;*

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

By relying on this, learned advocate submits that there is no necessity to register the document of family arrangement. Merely because the document is not registered, that cannot be a ground to reject the same.

11. In ***K. Arumuga Velaiah*** (supra), the Hon'ble Apex Court has considered provisions of Section 17(1)(e), 17(1)(b) and 17(2) (v) of the Registration Act, 1908. In paragraph 25 it is observed that:

"In Siromani Vs. Hemkumar, [(1968) 3 SCR 639], one of the questions raised was whether the validity of a partition deed could be challenged as being inadmissible in evidence on the ground that it had not been registered as mandated under Section 17(1)(b) of the Act. In that case it was held that under the recitals of Ext. D-4 considered therein, there was allotment of specific properties to individual coparceners and the document therefore fell within the mischief of Section 17(1)(b) of the Act as it required registration. Hence, the said document was not admissible in evidence to prove the title of the coparceners to any particular property or to prove that any particular property had ceased to be joint property. However, document Ext. D-4 considered therein was held to be admissible to prove an intention on the part of the coparceners to become divided in a status; in other words, to prove that the parties ceased to be joint from the date of the instrument vide Nani Bai V. Gita Bai Kom Rama Gunge [1959 SCR 479]. The said judgment is not applicable to the facts of this case."

12. In case of *Rajendra Lalitkumar Agrawal* (supra), the Hon'ble Supreme Court has held that, interpretation of terms and conditions of documents constitutes substantial question of law. In that case it is held that, if substantial question of law arises then it would be necessary for the High Courts to frame substantial questions of law and call upon the respondents to answer the same.

13. It is thus, submitted that considering the above judgments, the findings of Appellate Court are perverse as it has considered that the relinquishment deed is not proved, since it is not registered.

14. Respondents submitted that both the Courts have rightly held that relinquishment deed cannot be considered as the same is not registered. The Courts have minutely considered the said document and it is only thereafter the suit was decreed. The Trial Court has considered that defendant No.2 Subhash could not produce documentary evidence to show that he purchased land Gut No.247 from his income. It is further considered as to whether document at Exhibit-85 was executed with the consent and if it was executed as to why no names of defendants were entered in the revenue record and that defendants never attempted to get their names recorded in those lands.

15. Thus, considering all the above, this Court finds that the

judgments cited by the learned advocate for appellants are not applicable to the facts in present appeal. Both the Courts have rightly held that relinquishment deed at Exhibit-85 is not proved and once it is held that Exhibit-85 is not proved, then there is no question of coming to the conclusion that there was partition or family arrangement between the parties. It is rightly held that the suit for partition was, therefore, maintainable and is rightly decreed.

16. This Court on going through both the judgments and the citations relied upon by learned advocate for appellants, holds that the appellants have not made out case calling for interference by this Court. No substantial question of law arises in this appeal and the same is, therefore, dismissed. No order as to costs.

17. In view of dismissal of the second appeal, the civil application also stands disposed off.

18. At this stage, learned advocate for appellants prays that the interim relief be continued for a period of four weeks. Considering that the interim relief was running since 2012 in favour of appellants, the same is hereby continued for a period of four weeks from today.

(KISHORE. C. SANT, J.)