

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.562 OF 2022
WITH
INTERIM APPLICATION NO.17049 OF 2022**

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.11.30
16:30:09
+05:30

Uma Madhav Agaskar ... Appellant

V/s.

Manorama Motiram Dandekar & Ors. ... Respondents

Mr. Sachin P. Shetye for the appellant.

Mr. Drupad S. Patil for the respondents.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 30, 2023

P.C.:

1. The appellant is original plaintiff who filed Regular Civil Suit No.732 of 2012 seeking declaration, partition and injunction. Both the Courts below dismissed the suit recording a finding that the plaintiff relinquished her share before the City Survey Officer.

2. The plaintiff filed suit claiming share in the properties described in paragraph 1 of the plaint. According to her, defendant Nos.1 to 3 got her signatures on the blank papers stating that such signatures are necessary for making entries in the revenue record. Believing the words of defendant Nos.1 to 3, she signed blank papers. However, thereafter when she claimed rights over the suit properties, the defendants informed her that she had relinquished her share and, therefore, she filed suit for partition and separate possession.

3. The defendants contested the suit contending that after the death of common ancestor Motiram on 13 January 1982, the plaintiff and defendant Nos.1 to 3 and 5 were entitled to share of deceased Motiram. Defendant No.2 filed an application before the City Survey Officer to enter names of the heirs and legal representatives in the city survey record. The plaintiff voluntarily relinquished her share in the suit properties in favour of defendant Nos.1 to 3. Statement to that effect was recorded by the City Survey Officer in the year 1983. Parties acted in furtherance of such relinquishment. The suit was filed in the year 2008.

4. The Courts below recorded a finding that the documents below Exhibits 103 and 105 which are the record produced by a public officer in discharge of official duty and are public documents, indicates that the plaintiff stated before the City Survey Officer that she was given her due by her father during his lifetime and, therefore, she is not concerned with the suit properties. It is stated that, therefore, she has no objection to transfer properties in favour of defendant Nos.1 to 3.

5. The plaintiff appears to have signed the said statement before the City Survey Officer on 14 March 1983. The said document is at Exhibit 103. Exhibit 105 is also similar statement made by the plaintiff stating that both the sisters are residing in their matrimonial home and they are releasing their share in favour of both brothers. They stated before the City Survey Officer that their names may not be entered in in the city survey record.

6. Both the Courts below recorded a finding that the plaintiff

admitted in the cross-examination that she signed on the blank papers. Once the signature on the statement is admitted, it is for the plaintiff to prove by adducing reliable evidence and by giving details as required under Order 6 Rule 4 of the Code of Civil Procedure, 1908 about misrepresentation, undue influence or fraud, if any. In the absence of such pleadings, the Courts below have rightly placed reliance upon the statements recorded in documents below Exhibits 103 and 105. Therefore, the finding of fact recorded by the Courts below that plaintiff relinquished her share orally before the City Survey Officer need not be interfered.

7. In so far as the submission of the learned advocate for the appellant that such oral relinquishment is not permission as such relinquishment requires registered document is concerned, the issue is no longer *res integra* in view of the judgment of the Apex Court in **Ramdas Chimna v. Pralhad Deorao & Ors.** reported in AIR 1965 Bombay 74. This Court held that relinquishment by a female of her interest in the joint family property was merely abandonment of her interest in the joint family property, even though it consists of immovable properties and is of value of Rs.100/- onward can be effected without written instrument. It is only if such relinquishment is evidenced by a written document, such document would require registration.

8. Therefore, in my opinion, the Courts below rightly relied on the oral relinquishment by the plaintiff of her share in the suit properties. The finding of fact recorded by the Courts below are based on evidence on record.

9. No substantial question of law is involved in the present second appeal. The second appeal is dismissed. No costs.

10. In view of dismissal of the second appeal, all pending interlocutory applications stand disposed of as infructuous.

(AMIT BORKAR, J.)