

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

SECOND APPEAL NO.165 OF 2021

- 1) ~~Harihar Narayanrao Daterao~~
~~aged about 74 years~~
~~Occupation : Agriculturist,~~
~~R/o Anand Bhawan, Rajapeth,~~
~~Amravati, Tq. & Dist. Amravati.~~

Deleted as per Courts Order
 dt.23.08.2021

[1]-[A] Sau. Pratibha wd/o Harihar Daterao
 aged about : 65 years, Occupation :
 Housewife, Behind Dr. Bakhtar
 Hospital Anand Bhavan Rajapeth,
 Amravati – 444606

[1]-[B] Sau. Vaishali Nitin Badgujar
 aged about : 48 years, Occupation :
 Lecturer, Badgujar Narsingh Home
 Shivaji Park Deshmukh Fail Akot
 Tq. Akot Dist. Akola

(Appellant Nos(1-A to 1-E)
 are the legal heirs of Org.
 defendant No.1)

[1]-[C] Sau. Vrushali Atul Badgujar
 aged about 41 years Occupation :
 Doctor. “Vyanktesh Clinic”
 Kumbhar Tek, Shirpur Dhule

[1]-[D] Shri Gaurav Harihar Daterao
 aged about : 37 years, Occupation :
 Agriculturist, Behind Dr. Bakhtar
 Hospital Anand Bhavan Rajapeth,
 Amravati – 444606

[1]-[E] Sau. Soniya Rahul Bherde
 aged about : 34 years, Occupation :
 Housewife, Vimal Nagar, Farshi
 Stop Amravati Tq. & Dist.
 Amravati 444606

.... Appellant(s)

// VERSUS //

- 1) Smt. Usha Purushottam Daterao
aged about 68 years occupation : House hold
- 2) Sudesh Purushottam Daterao
aged about 55 years, Occupation : Agriculturist.
Both R/o Rajapeth, Amravati.
- 3) Smt. Sandhya Sunil Badgujar
aged about 48 years, Occupation :
House hold, R/o Dhule.
(Respondent Nos.1
to 5 are the legal
heirs of Org.
Plaintiff No.1)
- 4) Varsha Kalash Vaseval
aged about 47 years,
Occupation : House hold,
R/o Dahisath Amravati.
- 5) Sarika Atul Barde,
aged about 47 years,
R/o Vndya Wasini Colony, Amravati.
- 6) Shrikant Narayanrao Daterao,
aged about 51 years,
Daterao Mangalkaryalaya, Rajapeth Amravati
(Org. Plaintiff
No.2)
- 7) Prakash Narayanrao Daterao **(Dead)**
 - (a) Sau. Lata Prakash Daterao
aged about : 53 years,
Occupation : Household.
 - (b) Shyam Prakash Daterao
aged about : 25 years,
Occupation :Agriculturist
 - (c) Sumit Prakash Daterao
aged about : major,
(a) to (c) All R/o Daterao Mangal Karayalaya, defendant No.2)
Rajapeth, Amravati.
(Respondent Nos.
7-a to 7-e are the
legal heirs of Org.
 - (d) Chitrlekha Rajendra Thavari,
aged about : 28 years, R/o Kishor Nagar, near
Motinagar, Amravati, Tq. & Dist. Amravati.

(e) Sau. Radhika Sachin Karodpati [Badgujar]
aged about : Major,
R/o Parola Tq. & Dist. Dhule.

... Respondent(s)

Shri V.K. Kothale, Advocate for the appellant(s)
Shri J.J. Chandurkar, Advocate for the respondent Nos.2 & 6

CORAM : ANIL S. KILOR, J.
DATED : 17th March 2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. The second appeal is arising out of the judgment and decree dated 27.09.2019 passed by District Judge-3, Amravati, dismissing the appeal and confirming the judgment and decree dated 13.08.2007 passed by the Civil Judge Senior Division, Amravati in Special Civil Suit No.31 of 1996, decreeing the suit for partition and separate possession.
4. The brief facts of the present case are as under: (The parties are referred to as per their status before the trial Court)

The plaintiffs/respondent Nos. 1 to 6 filed a suit for partition and separate possession. It was the case of the plaintiffs that the plaintiff Nos.1 and 2 and the defendant Nos.1 and 2 are the real brothers and they jointly purchased the field survey No.35/2 Adm. 24A 5G and survey No.66 Adm. 10A 27G (hereinafter referred to as “suit property”) situated at Pragane Badnera, Taluka and District Amravati and as such, they are having 1/4th share each in the suit field being co-owners.

5. The defendant No.1 appeared and resisted the claim. It is the case of the defendant No.1 that, though the suit field was purchased in joint names of the plaintiffs and the defendants, he is an exclusive owner of the suit property, as he purchased the same from his own funds.

6. The learned trial Court, after examining and scrutinizing the oral as well as documentary evidence led by the parties, decreed the suit, holding that the plaintiffs and the defendants are having 1/4th share each in the suit property.

7. The defendant No.1 carried an appeal before the District Judge by Regular Civil Appeal No. 208 of 2012 which came to be dismissed vide impugned judgment and decree dated 27.09.2019. The same is the subject matter in the present appeal.

8. The learned counsel for the appellants/defendant No.1 submits that the suit property was purchased by him from his own funds. However, at the relevant time, his father was in jail and his mother advised him to purchase the suit property in joint names along with his brothers. Therefore, he purchased the suit property in joint names. It is submitted that, both the Courts below have committed error in holding that the suit property was purchased by the plaintiffs and the defendants jointly.

9. It is further submitted that though the application under Order 41 Rule 27 of the Code of Civil Procedure (CPC) was decided but not on merit. He therefore, submits that the points raised in the application, have not been considered by the learned lower Appellate Court.

10. On the other hand, the learned counsel for the plaintiffs points out that both the courts below have recorded finding of fact that the suit property was purchased by the plaintiffs and the defendants jointly. He further points out that it has come on record that the other two ancestral properties were sold out and from its sale proceeds the present suit property was purchased jointly by the plaintiffs and the defendants. Accordingly, he submits that finding of fact recorded by both the Courts below are based on the evidence and as there is no perversity committed, there is no scope under Section 100 of the CPC.

11. In light of the rival contentions of the parties, I have perused the record and the impugned judgments and the decree.

12. Admittedly, the sale deeds, in respect of the suit property, stand in the names of the plaintiffs and the defendants jointly and as such, the plaintiffs are claiming 1/4th share in the suit property.

13. The defendant No.1 has set up a defence that he is an exclusive owner of the suit property, as he has purchased it from his

own funds and the plaintiffs and defendant No.2 have not contributed a single pie in the said transaction.

14. Thus, the burden would lie on the defendant No.1 to prove the said fact. However, both the Courts below have categorically observed that the defendant No.1 has failed to prove the said fact by leading sufficient evidence.

15. The defendant No.1 is harping upon the document, namely diary produced by him. However, admittedly, he has not produced another evidence. Even he has not examined the vendor in view of the evidence of the defendant No.1 that, twice he himself made the payment to the vendor.

16. Admittedly, the defendant No.1 did not examine the vendor to prove that he paid the amount of consideration to the vendor. The defendant No.1 has not examined the attesting witnesses as well to show that the suit property was purchased by him, but the names of his brothers were mentioned as nominal owners.

17. Even though in the oral evidence, it is the case of the defendant No.1 that he added the name of the plaintiffs and defendant No.2 as per the advice of his mother, the said fact was not pleaded in the written statement by the defendant No.1. It has also come on record that on both the sale deeds, the signature of the defendant No.1 is not there.

18. In the above referred backdrop and considering the oral as well as documentary evidence, I am of the opinion that, both the Courts below have rightly recorded concurrent finding of fact that the suit property was owned by the plaintiffs and the defendants jointly and as such, in absence of any perversity pointed out by the defendant No.1, I do not find any merit in the submission of the learned counsel for the defendant No.1 that the defendant No.1 is an exclusive owner of the suit property.

19. As far as the submission of the learned counsel for the appellants as regards the application under Order 41 Rule 27 of the CPC, I do not find any merit in the same, as it was already decided and while deciding the same, the learned Lower Appellate Court

has considered the same on its own merits. It is further evident that the said application was based on the events which took place even prior to the filing of the suit and no proper justification was given for not leading any evidence in respect of those events.

20. Thus, I do not find any substantial question of law involved in the present second appeal. Accordingly, it is **dismissed**.

21. It is made clear that the Court has not dealt with that issue, accordingly, the defendant No.1 has every right to agitate the said issue, as per law before the appropriate forum.

Rule is discharged. No costs.

[ANIL S. KILOR, J.]