



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

**SECOND APPEAL NO.271 OF 1992
WITH
CIVIL APPLICATION NO.2098 OF 1990**

1. Ganesh s/o Jairam
(Since deceased through legal representatives)
 - 1A) Jairam Ganesh
Age : 68 years, Occu.: Agriculture
R/o.: Gadga, Tq. Biloli, Dist. : Nanded
(Already on record as appellant No.3)
 - 1B) Rukminbai w/o Lakshmanrao Labshetwar,
Age : 72 years, Occu.: Household,
R/o.: Shrinicas Kirana Store,
Near Bus Stand, Degloor, TQ. Degloor,
District : Nanded.
 - 1C) Premalabai w/o Gangadhar Makawar,
Age : 45 years, Occu.: Agriculture,
R/o.: Gadga, Tq. Biloli, Dist. Nanded
2. Krishnabai w/o Ganesh
(Since deceased through legal representatives)
 - 2A) Jairam s/o Ganesh
Age : 68 years, Occu.: Agriculture,
R/o.: Gadga, Tq. Biloli, Dist. Nanded
(Already on record as appellant No.3)
 - 2B) Rukminbai w/o Lakshmanrao Labhshetwar,
Age : 72 years, Occu.: Household,
R/o.: Degloor, Tq. Degloor, Dist. Nanded.
 - 2C) Premalabai w/o Gangadhar Makawar
Age : 68 years, Occu.: Agriculture,
R/o.:
3. Jairam s/o Ganesh
Age : 37 years, Occu.: Agriculture,
R/o.: Gadga, Tq. Biloli, Dist. Nanded **APPELLANTS**
(Orig. Defendants)

VERSUS

Suryakant s/o Ganesh,

Age : 32 years, Occu.: Agriculture,

R/o.: Gadga, Taluka : Biloli,

District : Nanded

.... **RESPONDENT**
(Orig. Plaintiff)

....

Advocate for the Appellants : Mr. Ajinkya S. Reddy

Advocate for the Respondent : Mr. Anil S. Bajaj

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 31/01/2024

PRONOUNCED ON : 27/03/2024

JUDGMENT :

1. The present appellants, who are the original defendants in RCS No.69 of 1984, have preferred this appeal against the judgment and decree dated 19/10/1989 passed by the learned Additional District Judge, Nanded (hereinafter referred to as 'the learned first appellate court') in RCA No.96 of 1986. The learned first appellate court has slightly modified the judgment and decree dated 20/02/1986 passed by the Civil Judge Junior Division, Biloli (hereinafter referred to as 'the learned trial court') in RCS No.69 of 1984, by confirming decree of partition in favour of the present respondent i.e. original plaintiff. During pendency of this appeal, the present appellant Nos.1 & 2 died and therefore, their legal representatives are brought on record.

2. Background facts are as under :

The present respondent / plaintiff filed RCS No.69 of 1984 for partition and separate possession of his 1/4 share in the suit properties comprising land Gut No.264 and house property bearing Grampanchyat No.203, both situated at Gadga, Taluka : Biloli, District : Nanded. According to the respondent / plaintiff the suit properties are ancestral properties of himself and the original defendants. However, since his relations with original defendants were not good and therefore, he started residing separately from them. Thereafter, he requested the defendants to effect partition among themselves to which they refused. Therefore, he was constrained to file the suit for partition as aforesaid.

On the contrary, the appellants /original defendants vide their written statement resisted the suit. According to them, the suit properties were ancestral but another property of one Nagabai was also required to be added in the suit since original defendant No.1- Ganesh had redeemed the same by selling out other ancestral properties of the rival parties. They also claimed that the respondents did not join Rukhminibai and Premalabai in the suit and therefore, it was bad for non-joinder of necessary parties. They also came with a case that the respondent / plaintiff had in fact relinquished his right in the suit property by executing a document

in favour of the original defendant Nos.1 & 3 and thereby waived his entire right in the suit properties. As such, they had claimed for dismissal of the suit.

The learned trial court by observing that the suit was not bad for non-joinder of necessary parties and properties, decreed the suit and held the respondent / plaintiff entitled for 1/4 share in the suit properties. The learned trial court also observed that the appellants / defendants failed to prove that respondent / plaintiff had relinquished his right in the suit properties after obtaining an amount of Rs.4,000/- in favour of original defendant No.3 Jairam.

Thereafter, the appellants / defendants also challenged the said judgment and decree passed by the learned trial court before the first appellate court but the learned first appellate court also confirmed the judgment and decree passed by the learned trial court by slightly modifying it to the extent of keeping encumbrance of Rs.5,000/- on the share of respondent / plaintiff. Hence, this appeal.

3. The learned counsel for the appellants / original defendants vehemently argued that both the courts below have not considered the evidence in proper perspective and failed to appreciate the family settlement – cum- relinquishment deed Exhibit-36. According to

him, both the learned courts below failed to observe that the respondent / plaintiff was estopped from claiming partition in view of his categorical admission regarding execution of relinquishment deed Exhibit-36. According to him, the conduct of the respondent / plaintiff in respect of not challenging the said Exhibit-36 almost for 7 years had clearly indicated that he was knowing that by way of family settlement he had relinquished the right in the suit properties. He pointed out that the amount which was paid for redemption of property of Nagabai had in fact come from sale of other joint family properties of plaintiff and defendants. Besides oral argument, the learned counsel for the appellants / defendants also relied on following judgments.

- i) *Gulam Abbas vs. Haji Kayyum Ali and others, reported in (1973) 1 SCC 1;***
- ii) *Pharez John Abraham (dead) By Lrs. vs. Arul Jothi Sivasubramaniam K. and others, reported in AIR 2019 SC 4235;***
- iii) *Thulasiddhara and Another vs. Narayanappa and others, reported in AIROnline 2019 SC 262;***
- iv) *Hari Shankar Singhanian and others vs. Gaur Hari Singhanian and others, reported in (2006) 4 SCC 658;***
- v) *The Commissioner of Wealth Tax, Mysore vs. Vijayaba, Dowger Maharani Saheb, Bhavnagar and others, reported in AIR 1979 SC 982;***

- vi) Kale and others vs. Deputy Director of Consolidation and others, reported in AIR 1976 SC 807;**
- vii) Sahu Madho Das and others vs. Mukand Ram and another, reported in AIR 155 SC 481;**
- viii) Ravinder Kaur Grewal and others vs. Manjit Kaur and others, reported in AIR Online 2020 SC 669;**
- ix) Subraya M. N. vs. Vittala M.N. and others, reported in AIR 2016 SC 3236;**
- x) Tammareddi Venkataramayya and another vs. Tammareddi Tandava Krishna Rao and others, reported in AIR 1963 Andhra Pradesh 305;**
- xi) Smt. Madankuwar and others vs. Smt. Sushila and Another, reported 2017 (5) ABR 616 and**
- xii) Ravinder Kaur Grewal and others vs. Manjit Kaur and others, reported in AIR Online 2020 SC 669.**

4. On the contrary, the learned counsel for the respondent / plaintiff supported the judgments passed by both the learned courts below. According to him, both the learned courts below have rightly held that relinquishment deed Exhibit-36 is not admissible in the evidence for want of registration which was also denied by the plaintiff. He pointed out that the property of Nagabai even after redemption, was exclusively owned by her and she had become absolute owner of the same and therefore, said property was not at

all necessary to be joined in the suit since the same never acquired status of ancestral property. He further pointed out that document relinquishment deed Exhibit-36 was never executed by the respondent / plaintiff and there was no pleading in the written statement that it was in respect of any family settlement. Thus, in view of concurrent finding of both the learned courts below, the present second appeal needs to be dismissed. He also relied on following judgments.

- i) Nilkant s/o Sampat Khandade vs. Bhaurao s/o Sampat Khandade and another, reported in 2008 (4) Mh.L.J. 215;**
- ii) K. B. Saha and Sons Private Limited vs. Development Consultant Limited, reported in (2008) 8 SCC 564;**
- iii) Saurav Jain and Another vs. A.B.P. Design and another, reported in 2021 SCC OnLine SC 552;**
- iv) Dinaji and others vs. Daddi and others, reported in (1990)1 SCC 1 and**
- v) Govind Das vs. Kanhiyalal and another, reported in (2000) 9 SCC 219.**

5. Heard rival submissions. Also perused documents on record alongwith both the impugned judgments.

6. Though the learned counsel for the appellants / defendants raised so many substantial questions of law by filing the same on record and being ground Nos.2 & 3 in the appeal memo, but on going through the same only following substantial questions of law appear to be involved in this appeal.

- i) Whether the learned courts below failed to appreciate conduct of respondent / plaintiff of not challenging the relinquishment deed Exhibit-36 for about 7 years, leading to the inference that the respondent / plaintiff by way of family settlement, was estopped from claiming partition ?
- ii) Whether the document i.e. relinquishment deed Exhibit-36 was a family settlement and therefore, needs no registration and therefore, admissible in the evidence ?
- iii) Whether the property gifted by Nagabai to the respondent / plaintiff, had acquired status of joint family property ?
- iv) Whether both the learned courts below erred in holding the gift made by Nagabai in favour of the respondent / plaintiff as proved when the deed to that effect was not produced on record ?

7. It is significant to note that the learned counsel for the appellants / defendants is claiming that plaintiff has given certain admissions in his cross-examination as regards the execution of the alleged family settlement – cum- relinquishment deed at Exhibit-36. He also claimed that conduct of the plaintiff of not challenging the

said relinquishment deed for almost 7 years, definitely appears *malafide*. However, the cross-examination of the respondent / plaintiff clearly indicates that the respondent / plaintiff in clear terms has denied the execution of the said relinquishment deed. Further he has categorically denied that there was any such family settlement between himself and defendants by which he would not claim any right in the suit properties since he had got the land of Nagabai. The learned counsel for the appellants / defendants though relied on so many judgments mentioned above, but on going through those judgments it appears that the defendants are trying to infer the document Exhibit-36 being a document of family arrangement – cum – relinquishment deed. However, the recitals of the said relinquishment deed did not speak about any such family arrangement that since the plaintiff had got the land of Nagabai, he relinquished his rights in the suit properties. The learned counsel for the appellants / defendants also tried to argue in the light of some of the judgments relied on by him that the family arrangement document requires no registration and therefore, the observation of both the courts below that Exhibit-36 was inadmissible in evidence due to non-registration, is illegal and perverse. It is significant to note that the defendants / appellants in their written statement, have not uttered any single word that the relinquishment deed

Exhibit-36 was executed due to some family settlement. It was never a case of defendants that Exhibit-36 was executed in view of any family arrangement. The recitals of Exhibit-36 clearly indicate that there was no such family settlement, specifically pleaded. Therefore, it appears that the present appellants / defendants for the first time have come with a case that Exhibit-36 was some sort of family arrangement which requires no registration. Therefore, for want of specific pleading, such submission converting so called relinquishment deed in to family settlement, cannot be accepted at all. Therefore, the judgments relied upon by the appellants / defendants observing that family arrangement needs no registration are not at all helpful at this juncture or at such belated stage.

8. The learned counsel for the appellants also tried to argue that when the relinquishment deed Exhibit-36 is there on record, the respondent / plaintiff is estopped from challenging the same. On the contrary, the learned counsel for the respondent / plaintiff has submitted that there is no need to challenge such deed of relinquishment as the respondent / plaintiff has clearly denied its execution. According to him, even if it is treated as a deed of relinquishment, the same is not admissible in the evidence for want of registration. He placed his reliance on the observation of this court in judgment in case of ***Nilkant Sampat Khandade vs.***

Bhaurao Sampat Khadade and another (*supra*), wherein it is observed as follows :

“10. This court finds that in view of section 34 read with section 37 of the Bombay Stamp Act, 1958 and section 17 read with section 49 of the Registration Act, 1908, the document, in question is rendered inadmissible in the following admitted premises:-

- (a) Suit is for partition and possession.*
- (b) Defendant's possession is admitted.*
- (c) Nothing is to be shown or proved for collateral purpose or issue from this document.*
- (d) Document is admittedly for “Relinquishment of right in immovable property” for a disclosed consideration of Rs.50,000/-.*
- (e) Document is on impressed stamp paper of Rs.50/- which is admittedly insufficient.*
- (f) Document is not referred for compliance under section 37 of the Bombay Stamp Act, 1958.*
- (g) Under section 34, it is not admissible due to failure to comply with proviso to section 34.*
- (h) Admittedly, it needs stamp chargeable as per law.*
- (i) This document is not registered.”*

Further, he has also relied on the observation of the Hon'ble Apex Court in the judgment in case of **K. B. Saha and Sons Pvt. Ltd. vs. Development Consultant Ltd.** (*supra*), wherein the effect of non-registration of documents required to be registered as contemplated in Section 49 of the Registration Act is discussed. The

Hon'ble Apex Court in the aforesaid case has ultimately concluded that the relinquishment deed in respect of right over the immovable property needs registration and if it is unregistered, is inadmissible in evidence of a transaction affecting immovable property. It is also clarified in the said judgment that it can be considered only for collateral purpose to the limited extent and cannot be used for the purpose of saying that the deed created or declared, assigned, limited or extinguished a right to immovable property. In short, the term 'collateral purpose' would not permit the party to establish any of these acts from the deed itself. Thus, when the respondent / plaintiff has categorically denied the execution of such relinquishment deed in his cross-examination, the non-registration of such document definitely makes it inadmissible in the evidence as observed by both the learned courts below.

9. Further, the Hon'ble Apex Court has also reiterated this view in the case of ***Dinaji & others vs. Daddi and others*** (*supra*). Further, the Hon'ble Apex Court in the judgment in case of ***Govind Das vs. Sanhiya Lal and another*** (*supra*) has clarified that the conclusion arrived at by the learned trial court and the learned first appellate court needs to be upheld as it is in the light of evidence adduced before it and therefore, the High Court had no jurisdiction to interfere with such concurrent finding of the facts. In the instant

case also both the courts below have concurred on the point of inadmissibility of the relinquishment deed for the reasons mentioned above. Therefore, in the light of the observation of Hon'ble Apex Court in the aforesaid case, there is no reason to interfere with such finding of facts. Therefore, considering these aspects, the observation of both the learned courts below that the relinquishment deed Exhibit-36 required registration under the provisions of Indian Registration Act appears proper in the circumstances of the present case.

10. The learned counsel for the appellants / defendants also raised objection that the property of Nagabai was in fact required to be treated as a joint family property since it was redeemed from the joint family income of the present rival parties. However, this issue is properly dealt by both the learned courts below in proper manner and in view of the concurrent finding on this aspect, there is no need to discuss it again at this juncture. The learned counsel for the appellants / defendants also tried to argue that both the learned courts below held that the gift by Nagabai in respect of her land in favour of the respondent / plaintiff was to be proved specially when such gift deeds were not produced on record. However, the pleadings on record specially by the appellants / defendants, clearly indicate that they did not dispute contention of the respondent / plaintiff on the aspect of such gift. Therefore, the observation of both the learned courts below about such gift, as proved being an admitted fact, cannot be called illegal or perverse. Therefore, considering all these aspects, specially the failure on the part of the

appellants / defendants to establish the relinquishment deed Exhibit-36 as a family arrangement, the concurrent findings of both the learned courts below in favour of the respondent / plaintiff seem proper. Hence, no substantial questions of law as raised the appellants / defendants appear to be involved in this matter and therefore, no substance is there in the appeal. Accordingly it stands dismissed.

11. In view of dismissal of the second appeal, pending Civil Application No.2098 of 1990 also stands dismissed.

12. After pronouncement of the judgment, the learned counsel for the appellants requested for continuation of *status-quo* order which was in force during the pendency of the appeal.

13. The learned counsel for the respondent strongly opposed the request made on behalf of the appellants. However, considering the fact that the *status-quo* order was in force during the pendency of appeal, it be continued till further period of eight weeks.

(SANDIPKUMAR C. MORE, J.)