



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

**SECOND APPEAL NO.184 OF 1992**

Vijay Bhaskarrao Deshmukh,

Age : 33 years,

R/o.: Hipparga (Rava) at present Yeoti,

Tq.: Tuljapur, Dist. Osmanabad ...

**APPELLANT**

**(Orgi. Plaintiff )**

**VERSUS**

1. Tukaram s/o Shivram Mali,  
Age : 36 years, Occu.: Agriculture,  
R/o.: Hipparga (Rava)  
Tq.: Tuljapur, Dist. Osmanabad

2. Bhaskar s/o Yadavrao Deshmukh  
(Died) Through his Lrs.

2A. Taramati wd/o Bhaskar Deshmukh,  
Age : 72 years, Occu.: Household,  
R/o.: Akluj, Tq. Malshiras,  
District : Solapur

2B. Sumitra w/o Prasad Bhagwat,  
Age : 45 years, Occu.: Household,  
R/o.: Akluj, Tq. Malshiras,  
District : Solapur.

2C. Ranjana w/o Pravin Joshi,  
Age : Major, Occu.: Household,  
R/o.: At post : Abhona Tq. Kallav,  
District : Nashik.

.... **RESPONDENTS**

**(Resp.Nos.1 & 2- Org. Defts.)**

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Advocate for the Appellant : Mr. Vinesh C. Solshe

Advocate for Respondent No.1 : Mr. R. P. Bhumkar

Advocate for Respondent Nos.2A to 2C : Mr. Yogesh R. Shinde h/f  
Mr. R. R. Karpe

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**CORAM : SANDIPKUMAR C. MORE, J.**

**RESERVED ON : 02/02/2024.**

**PRONOUNCED ON : 22/04/2024**

***JUDGMENT :***

1. The present second appeal is directed against the judgment and order passed by the learned Additional District Judge, Osmanabad i.e. the learned first appellate court, in RCA No. 112 of 1993. Under the impugned judgment, the learned first appellate court has reversed the decree passed in RCS No.42 of 1977 on 12/07/1991 by the learned trial court i.e. Civil Judge (Junior Division), Tuljapur.

2. Facts giving rise to the present appeal can be summarized as follows :

The appellant / plaintiff has filed RCS No.42 of 1977 against the present respondents for declaring him as a owner of the suit lands namely Survey Nos.147-G and 177-G, admeasuring 3 acres and 2 acres 26 gunthas respectively, situated at village Hipparga (Rava) in Tuljapur Taluka. He also claimed that present respondents No.1, who is original defendant No.2, be restrained from interfering his possession over the suit lands specifically Survey No.147-G. Besides this, the appellant / plaintiff also

claimed declaration that the sale deed dated 12/05/1976 executed by present respondent No.2 i.e. original defendant No.1 in favour of respondent No.1 Tukaram Mali, be declared as null & void and not binding upon him. According to the appellant / plaintiff he is the owner of aforesaid suit lands and cultivating the same since 1974-1975. Original respondent No.2, who was his father, had no concern with the suit lands and he being a minor, his maternal grandfather – Shankarrao Kulkarni was cultivating the suit lands. However, on 05/11/1976 when his grandfather – Shankarrao Kulkarni went to cultivate the suit land i.e. Gut No.147-G, the present respondent No.1 obstructed his possession and denied the ownership of the appellant / plaintiff over that land. Therefore, the the appellant / plaintiff was constrained to file the aforesaid civil suit for the reliefs mentioned above. Defendant No.1 i.e. present respondent No.2, who is the father of the appellant / plaintiff, did not file written statement and thus, declined to contest the suit.

On the contrary, the present respondent No.1 i.e. original defendant N.2, contested the suit by filing written statement at Exhibit-25 contending that defendant No.1 was 'Karta' of the family and there was no partition of the suit lands between the appellant / plaintiff and defendant No.1. Further, according to

him, since defendant No.1 had taken loan of Rs.2,000/- during the period of drought, he therefore, executed 'Khandpatra' in favour of defendant No.2 in respect of the land Gut N.147-G on 23/12/1974 and since then defendant N.2 was in possession of the suit land. Thereafter, on 12/05/1976 defendant No.1 sold the suit land i.e. Gut No.147-G to defendant No.2 for welfare of his family. Thus, defendant No.2 with these averments requested to dismiss the suit.

The learned trial court after conducting the trial held that the appellant / plaintiff proved his title over the suit property alongwith possession. In addition, the learned trial court declared the sale deed executed by defendant No.1 in favour of defendant No.2 in respect of the land Gut No.147-G as null and void and not binding upon the appellant / plaintiff and also restrained defendant No.2 from interfering possession of the the appellant / plaintiff over the suit properties. However, the learned first appellate court has reversed the finding of the learned trial court in RCA N.112 of 1993 and dismissed the suit i.e. RCS No.42 of 1977 of the appellant / plaintiff in its entirety. Hence, this second appeal.

3. The learned counsel for the appellant / plaintiff submits that the learned first appellate court has definitely erred in setting aside

the decree passed by the learned trial court in favour of the appellant / plaintiff and wrongly dismissed the suit of the the appellant / plaintiff. According to him, there was documentary evidence on record in form of mutation entry No.495 at Exhibit-6, whereby defendant No.1 i.e. father of the appellant / plaintiff had relinquished his right over the suit properties in favour of the appellant / plaintiff. Further, the learned first appellate court also ignored the judgment of Division Bench of this Court in the case of **Hirabai w/o Harji Ingale vs. Babu Manika Ingale, reported in 1980 Mh.L.J. 494**, wherein it is observed that oral relinquishment of interest by a Hindu in joint family property exceeding Rs.100/- in value is valid and effective. According to him, defendant No.2 though claimed that defendant No.1 had sold the suit land out of legal necessity but he did not make any inquiry about such necessity before purchasing the suit property. On the other hand, the learned counsel for respondent No.1 supported the judgment passed by the learned first appellate court. According to him, the judgment of Division Bench in case of **Hirabai Ingale (supra)** is over ruled by the Full Bench of this Court in the case of **Kesharbi Jagannath Gujar vs. The State of Maharashtra and others, reported in AIR 1981 Bombay 115** and has no applicability in the instant matter. Further, according to him, there cannot be any

issue of legal necessity as the language of mutation entry No.495 at Exhibit-6 clearly indicated that there was no relinquishment of interest by defendant No.1 in favour of the appellant / plaintiff in the suit land but it was only effected for a limited purpose of cultivation. As such, he prayed for dismissal of the appeal.

4. Heard rival submissions. Also perused entire record and proceedings alongwith impugned judgments.

5. The learned counsel for the appellant / plaintiff has relied on following judgments :

- 1. Hirabai w/o Harji Ingale vs. Babu Manika Ingale, reported in 1980 Mh.L.J. 494 &**
- 2. Kisansing Mohansing Balwar and others vs. Vishnu Balkrishna Jogalekar, reported in AIR 1951 Bomaby 4.**

On the contrary, the learned counsel for the respondent No.1 has also placed reliance on following judgments.

- 1. Messrs. Trojan and Co. vs. Rm.N.N. Nagappa Chettiar, reported in AIR 1953 SC 235;**
- 2. Kisansing Mohansing Balwar and others vs. Vishnu Balkrishna Jogalekar, reported in AIR 1951 Bomaby 4 &**

**3. *Pandhiyar Prahladi Chenaji (deceased) Through L.R.s vs. Maniben Jagmalbhai (deceased) through L.R.s and others, in Civil Appeal No.1382 of 2022 decided by the Apex Court on 03/03/2022.***

6. On perusal of record, it is evident that the learned trial court has declared the appellant / plaintiff as owner of the suit properties mainly on the basis of mutation entry No.495 at Exhibit-6 and held that it was relinquishment of right by father of the appellant / plaintiff i.e. defendant No.1 in his favour. The learned trial court also relied on observation of Division Bench of this Court in the case of **Hirabai Harji Ingale** (*supra*), wherein oral relinquishment of interest by a Hindu in joint family property exceeding Rs.100 in value is held valid and effective. Further, the learned trial court has set aside the sale deed 12/05/1976 executed by defendant No.1 in favour of defendant No.2 mainly on the ground that after relinquishment of right under the aforesaid mutation entry defendant No.1 was ceased to be owner of the suit property and therefore was not empowered to sell the suit property Gut No.147-G to defendant No.2. The learned trial court has also restrained defendant No.2 from interfering possession of the appellant / plaintiff over the suit property by observing that

defendant N.2 could not establish his possession over the suit land Gut No.147-G for want of relevant entry in the crop inspection column but at the time of filing suit, the appellant / plaintiff as per the entry in crop inspection column in the record of rights of the suit land, was found in possession.

7. Thus, the learned counsel for the appellant / plaintiff, has raised grounds M & P of the appeal memo as substantial questions of law involved in this matter. On going through the aforesaid grounds, following two substantial questions of law are raised by the appellant / plaintiff :

- i) *Whether the learned first appellate court failed to consider the provision of Section 9 of the Transfer of Property Act specially in the light of observation of Division Bench of this Court in the case of **Hirabai w/o Harji Ingale** (supra) ?*
- ii) *Whether it was necessary for respondent No.1 being the purchaser of suit land from father of the appellant / plaintiff to establish legal necessity for proving his title over the suit property ?*

8. So far as first substantial question of law is concerned, the learned trial court has approved the title of the appellant / plaintiff over the suit land mainly on the basis of mutation entry No.495 at

Exhibit-6. The learned trial court treated the said mutation entry as relinquishment of interest in the suit land by defendant No.1- father of the the appellant / plaintiff. However, it is extremely important to note that the learned trial court did not consider the language of said mutation entry No.495. On going through the said mutation entry, it appears that father of the appellant / plaintiff i.e. defendant No.1 had filed an application to enter name of the appellant / plaintiff in the record of rights of the suit lands only for the purpose of improvement and cultivation. Further, it is specifically mentioned in the said mutation entry that the suit lands had given to the share of defendant No.1 Bhaskar during partition. As such, when language of said entry is suggesting that defendant No.1 only entered name of the appellant / plaintiff in the record of rights of the suit land for limited purpose of cultivation and improvement, the inference drawn by the trial court that it was relinquishment of interest by defendant No.1 in favour of the appellant / plaintiff, is totally erroneous. Even the mother of the appellant / plaintiff had given specific admission in her cross-examination before the learned trial court that there was partition between the appellant / plaintiff and his father and that too by a registered partition deed. On this background the wording of mutation entry No.495 that defendant No.1 mutated the name of

the appellant / plaintiff in the suit land which he had acquired through partition for limited purpose, gains highest importance. Thus, what reveals that under the aforesaid mutation entry at Exhibit-6 defendant No.1 Bhaskar might have mutated the name of the appellant / plaintiff in the suit land which were his independent lands only for limited purpose of cultivation and improvement. In fact, there was no transfer of interest or relinquishment of interest as alleged by the appellant / plaintiff. Therefore, the observation of the learned first appellate court that the said mutation entry was only for limited purpose and did not amount to relinquishment of interest appears proper and probable in all circumstances. Considering this aspect there cannot be any significance to the observation of the Division Bench of this Court in the case of **Hirabai Harji Ingale** (*supra*). Thus, the first substantial question of law as mentioned above does not survive in the instant matter.

9. So far as second substantial question of law is concerned, it is in respect of burden upon present respondent No.1 i.e. defendant No.2 in the suit to establish the legal necessity since he claimed that defendant No.2 was in a need of money to overcome family expenses and therefore, sold the land Gut No.147-G to him. On

this aspect the learned trial court has observed that the sale deed executed in favour of defendant No.2, was illegal since defendant No.1 after relinquishment of his interest in the suit land was not empowered to sell the said land to defendant No.2. As against this, the learned first appellate court tilted in favour of defendant No.2 by observing that there was no relinquishment as such under the mutation entry No.495 by defendant No.1 and therefore, defendant No.1 being an independent owner of the suit land on the basis of partition, was definitely entitled to sell the same to anybody. The substantial question of law in respect of legal necessity appears to be raised by the appellant mainly relying on the observation of the learned trial court about the relinquishment of right by defendant No.1. However, while discussing the first substantial question of law, this court has already considered the scope of mutation entry No.495 and held that it was not relinquishment of interest by defendant No.1. Moreover, the admission from mother of the appellant / plaintiff as regard the partition between the the appellant / plaintiff and defendant No.1 i.e. his father, clearly indicated that defendant No.1 had become owner of the suit land in his own right and therefore, entitled to sell the land to anybody. As such, the question of establishing legal necessity of defendant No.1 at the time of sale of land Gut N. 147-G to defendant No.2, does not

arise. Accordingly, the second substantial question of law also does not survive.

10. So far as grant of injunction in favour of the appellant / plaintiff by the learned trial court is concerned, it is based on documentary evidence. The learned trial court has relied on 7/12 extract at Exhibit-5, wherein name of the appellant / plaintiff is mentioned in the crop inspection column for the year 1975-1976 by deleting earlier name of one Prabhakar Yadavrao Deshmukh. It is a case of the appellant / plaintiff that his maternal uncle-Shankarrao Kulkarni was cultivating the land on his behalf but surprisingly the name of Shankarrao Kulkarni is not mentioned in the record of rights of land Gut No.147-G. Further, the subsequent 7/12 extract at Exhibit-42 indicates name of said Prabhakar Yadavrao Deshmukh in crop inspection column for the year 1977-1978. It is significant to note that for the year 1976-1977 the name of the appellant / plaintiff was not there in the crop inspection column. Therefore, it appears that the name of the appellant / plaintiff was there in the cultivation column only for the year 1975-1976 and thereafter the name of Prabhakar Yadavrao Deshmukh continued. The appellant / plaintiff has definitely failed to explain such aspect and therefore, on the basis

of documentary evidence also it cannot be said that the appellant / plaintiff was in possession of the suit land Gut No. 147-G because firstly he was a minor at the relevant time and secondly there is no document on record to show that his maternal grandfather Shankarra Kulkarni in fact was cultivating the suit land. Further, it is not disputed that Gut No.147-G was included in Gut No.362 at the time of implementation of consolidation scheme and from 1979-1980 name of defendant No.2 i.e. present respondent No.1 continued in record of rights of the suit land. On the other hand, defendant No.2 has definitely proved the contents of sale deed Exhibit-72 by which he purchased the land Gut No.147-G to the extent of 3 acres from defendant No.1.

11. Thus, considering all these aspects, it appear that the learned appellate court has properly appreciated the evidence on record and rightly set aside the judgment and decree passed by the learned trial court in RCS N.42 of 1977 and dismissed the suit of the appellant / plaintiff in its entirety. Thus, the present second appeal stands dismissed and disposed of accordingly.

**( SANDIPKUMAR C. MORE, J. )**