



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

**SECOND APPEAL NO.139 OF 2024
WITH
CIVIL APPLICATION NO.6097 OF 2024
IN
SECOND APPEAL NO.139 OF 2024**

Abdul Samad Makdoom Saheb Shaikh
Age: 55 Years, Occ.: Service and Agriculture,
R/o: C/o: Manager, SBI, Main Branch, Doctor Lane
Nanded, Tq. and Nanded ..Appellant
(Orig. Defendant No.1.)

Versus

1. Parveen Begum Lalkhan Pathan,
Age: 54 years, Occ.: Household,
R/o: Galli No.11, Peer Burhan Nagar,
Nanded, At Present Plot No.41, G.No.
167, Sumayanagar, Near Sumaya Masjid,
Taroda (Bk), Tq. and District Nanded.
2. Hazera Begum Hafizurrahman @ Anwar Sahikh,
Age: 52 years, Occu.: Household,
R/o: Kumbhar Galli, Bichkunda,
Mandal Taluka Mandal,
Tal. Madnoor, Dist. Nizamabad (T.S.)
3. Najma Begum Shafiurrahman,
Age: 50 years, Occ.: Household,
R/o: Church Road, Udgir, Dist. Nanded.
4. Reshma Begum Sk. Qumruddin Choudhary,
Age: 48 years, Occ.: Household,
R/o: Shastri Nagar, Murum,
Tq. Omerga, Dist. Osmanabad.
5. Naznin Begum Wahidurrahman Shaikh,
Age: 46 years, Occ.: Household,
R/o: Kumbhar Galli, Bichkunda Mandal,
Tq. Madnoor, Dist. Nizamabad (T.S.)
6. Kausar Begum Maajid Shaikh,
Age: 44 years, Occ.: Household,

R/o: Omer Colony, Nanded,
Tal. & Dist. Nanded. (Orig. Plaintiffs)

7. Shahnaz Begum Muneeruddin Shaikh,
Age: 63 years, Occ.: Household,
R/o: Asif Nagar, Behind Milind Talkies,
Tq. and District Hyderabad (T.S.)
8. Shamim Begum Moinuddin Shaikh,
Age: 60 years, Occu.: Household,
R/o: Old Mondha Area, Tq. Aurad Barhali,
District Bidar (Karnataka State)
9. Mahmooda Begum Makdoom Sahab Shaikh,
Age: 80 yrs., Occ.: Household,
R/o: Galli No. 11, Peer Burhan Nagar,
Nanded, At present R/o: Plot No.41, G.No.
167, Sumayanagar, Near Sumaya Masjid,
Taroda (Bk), Tq. and District Nanded.
10. Abdul Aziz Mohammad Aazam Sahab Shaikh,
Age: Major, Occu. Agri.,
R/o: New Godavari Complex, Marathwada
Agency (Retail Shop) Degloor Naka, Nanded,
Tq. and District Nanded.
11. Ahmed Aazam Sahab Shaikh,
(Deceased) (Orig. Defendant Nos.2 to 6.)
..Respondents

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Mr. A. S. Radikar, Advocate for the Appellant.

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CORAM : S. G. CHAPALGAONKAR, J.
DATE : 26th NOVEMBER, 2024.

ORDER:-

1. The appellant takes exception to judgment and order dated 01.03.2018 passed by Civil Judge Junior Division, Degloor in Regular Civil Suit No.01/2012 as well as judgment and order dated 15.03.2024 passed by District Judge-1, Biloli in Regular Civil Appeal No.20/2018. (Hereinafter, parties are referred as per their

original status in the suit for the purpose of convenience and brevity).

2. The appellant/original defendant no.1 filed present second appeal. The respondents nos.1 to 6/original plaintiffs had instituted suit for partition, separate possession and mesne profit in respect of suit property, which is part and parcel of Block Nos.57 and 87 situated at village Takli (J), Taluka Degloor, District Nanded. The plaintiffs are real sisters of defendant no.1. It is their contentions that they are pardanashin women. Their father died on 14.05.1991 leaving behind suit property. During lifetime, their father Makdoom Saheb was cultivating suit land being owner and possessor. After demise of their father, they are entitled to succeed the same alongwith defendant no.1 and other heirs. However, defendant no.1 claiming exclusive right over suit property and trying to alienate the same. Therefore, they filed suit for partition, separate possession and mesne profit.

3. The suit was contested by defendant no.1 by filing written statement at Exhibit-67 contending that he sold his share in the suit land and incurred expenses for marriage of plaintiffs. He had acquired land through Hiba from his grandmother. He further contends that land was mortgaged by his father i.e. Makdoom to Ahmed Rasid Nabi and that has been redeemed by him from his

own income. Thereafter, he executed agreement to sale in favour of Iresh Malgonda Dandewar and receipt of said transaction was used for marriage of plaintiff nos.1 to 5. He has handed over possession of land to Dandewar. The Trial Court framed issues, recorded evidence of parties and concluded that defendant no.1 failed to prove his exclusive title over the suit property and plaintiffs are entitled for partition and separate possession of their share. The defendant no.1 filed Regular Civil Appeal No.20/2018 before the District Court at Biloli. The said appeal came to be dismissed by recording concurrent findings.

4. The learned Advocate appearing for the appellant would submit that suit land was not available for partition, since defendant no.1 had already transferred the same in favour of third party. However, they were not made party to the present suit. He would further submit that suit is barred by limitation. The appellant had acquired ownership and possession from the date of Hiba by grandmother. The plaintiffs could not claim any right in the suit property through father.

5. Pertinently, defendant no.1 has not produced any record in support of his contention that he acquired ownership by way of Hiba through his grandmother. The Trial Court as well as Appellate Court recorded concurrent findings of fact that defendant

no.1 could not establish his claim of exclusive ownership either based on Hiba or otherwise. Both the Courts have concurrently held that contention of defendant no.1 that he has transferred land by way of agreement to sale with the consent of plaintiffs is not established by leading acceptable evidence. Further, there is no material to indicate that lands were mortgaged by father of defendant no.1 and same has been redeemed by him from his own income. No documentary evidence is placed on record to show mortgage. Although defendant no.1 made attempt to rely upon Exhibit-41 being agreement to sale in respect of Block No.87, he failed to adduce evidence to prove the same. It is unregistered document with stipulation of delivery of possession. The same cannot be admitted in evidence for want of requisite stamp duty and registration. Even otherwise, agreement to sale itself cannot pass on the title.

6. The revenue record in respect of suit property shows that after death of father, name of defendant no.1 has been entered alongwith plaintiffs being legal representatives of Makdoom Saheb. The aforesaid facts clearly shows that defendant no.1 was not exclusive owner of the suit property. In light of aforesaid concurrent findings of fact, no substantial question of law arises for consideration in this second appeal.

7. Hence, Second Appeal stands dismissed.
8. In view of dismissal of Second Appeal, Civil Application does not survive and accordingly stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/November-2024