

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

**SECOND APPEAL NO.231 OF 2024
WITH
INTERIM APPLICATION NO.7757 OF 2024
IN
SECOND APPEAL NO.231 OF 2024**

Sushila Dhondu Gurav since deceased
through LRs.- Sanjay Dhondu Gurav ...Appellant/Applicant

Versus

Rajesh Krushna Gurav and Ors. ...Respondents

...

Mr. Rohan P. Surve *for the Appellant/Applicant.*

CORAM : SANDEEP V. MARNE, J.

DATED : 24 APRIL 2024.

PC:

1. Challenge in the present appeal is to the Decree dated 21 October, 2023 passed by the District Judge, Khed, District-Ratnagiri. The first Appellate Court has allowed the appeal and has reversed the Decree dated 18 March 2019 passed by the Civil Judge, Junior Division, Dapoli in Regular Civil Suit No.10 of 2007.

2. The Suit of the Plaintiff-Sushila was premised essentially on Agreement (Karar Patra) dated 15 March 1971. She contended that though purchase of the suit land under the provisions of Sections 32G and 32M of the Maharashtra Tenancy and Agricultural Lands

Act, 1948 took place in the name of Shankar, funds for such purchase were provided for by Plaintiff's husband-Dhondur Gurav. She further contended that since such purchased property formed joint family property, partition took place between Shankar and Dhondur, under which suit property came to the share of Plaintiff's husband - Dhondur Gurav. That the factum of such oral partition was merely recorded in the form of Karar Patra executed on 15 March 1971 between Sushila and Shankar.

3. Though the Trial Court believed theory set up by Plaintiff/Appellant and proceeded to decree the Suit by holding that the suit property was owned by Dhondur Gurav, after whose death Plaintiff No.1A-Sanjay Dhondur Gurav has become owner thereof, the first Appellate Court has reversed the Decree of the Trial Court and has dismissed the Suit filed by the Plaintiff.

4. I have heard Mr. Surve, the learned counsel appearing for the Appellant and has considered the submissions canvassed by him.

5. There is no dispute to the position that the Suit property was tenanted land. As on the tillers day, the same was cultivated by Shankar Gurav. Thus Shankar Gurav, in his individual capacity, became tenant in respect of the Suit property. Even if it is assumed that Plaintiff's husband Dhondur Gurav provided funds for purchase of the tenanted land under Sections 32G and 32M of the Tenancy Act to Shankar Gurav, the same does not convert the

status of the land as joint family property. Since Shankar was cultivating the property on the tillers day, he alone was the tenant and he alone became owner in respect thereof after issuance of 32M certificate. When a Suit land was not a joint family property, there was no question of partitioning the same. Therefore, theory of oral partition between Shankar and Sushila cannot be accepted.

6. In view of the above, if the title in the land was to be transferred from Shankar in favour of Sushila, the same ought to have been effected by a registered deed of Sale or Gift. Karar Patra dated 15 March 1971, though ostensibly shown as mere memorandum recording partition which had allegedly taken place, the same was in fact intended for effecting transfer of title from Shankar in favour of Sushila. In absence of payment of stamp duty and registration, the first Appellate Court has rightly proceeded to discard the effect of said Karar Patra. I am of the view that the first Appellate Court has not committed any palpable error in holding that the Karar Patra did not have effect of transfer of title from Shankar to Sushila. Thus, no substantial question of law is involved in the appeal. The Second Appeal is rejected and accordingly disposed of.

7. In view of disposal of the Second Appeal, the Interim Application No.7757 of 2024 does not survive and hence stands disposed of.

[SANDEEP V. MARNE, J.]