

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

**SECOND APPEAL (ST.) NO. 1191 OF 2024
WITH
INTERIM APPLICATION (L.) NO. 7930 OF 2024 (for stay)**

1. Shri. Ganpat Gopal Pawar
and Ors.

} *...Appellants*

: *Versus* :

1. Prashant Sarjerao Pawar
and Ors.

} *...Respondents*

Mr. Rajaram V. Bansode a/w. Ms. Sheetal Ubale, for the Appellants.

Mr. V.S. Talkute, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 23 April 2024.

P.C. :

1) By this Appeal, the Appellants challenge the Decree dated 30 August 2023 passed by the District Judge-1, Vaduj dismissing Regular Civil Appeal No. 125 of 2012 and confirming the Decree dated 30 August 2012 passed by the Civil Judge Junior Division, Vaduj in Regular Civil Suit No. 129/2003.

2) Plaintiffs/Respondents filed Regular Civil Suit No. 129/2003 seeking partition of land bearing Gat Nos. 536. It is common ground that so

far as other lands bearing Gat Nos.526 and 530 are concerned, the same were partitioned vide partition deed dated 26 January 1991. The rest of the suit properties at paras-1(c) to 1(d) are house properties. Defendant Nos.1 to 4 took a defence in their Written Statement that the land bearing Gat No.536 was a self-acquired property of Gopal Pawar. Reliance was placed on Agreement for Sale executed by the erstwhile owner, Laxmibai Narayan Kulkarni in the name of Gopal Govind Pawar in the year 1975. The Trial Court, however, held the land bearing Gat No. 536 is an ancestral property and proceeded to partition the same by the impugned decree. The Trial Court's decree has been upheld by the first Appellate Court.

3) The competing claims between the rival parties is about status of land bearing Gat No.536. While it is the case of the Plaintiffs that the said land is ancestral property, Defendant Nos.1 to 4 claim that the same was purchased by their father (Gopal Pawar) vide Agreement for Sale executed in the year 1975. Mr. Bansode, the learned counsel appearing for the Appellants would contend that consideration was paid for purchase transaction executed in the name of Gopal. Alternatively, he would submit that after the death of Govind Pawar, Gopal Pawar was exclusively cultivating the land and therefore tenancy devolved upon him alone. He would submit that for claiming any share in the said tenanted property bearing Gat No.536, it was necessary for the brothers to prove that the tenancy in respect of the said land continued in their name after father's death.

4) It is seen that the Original tenant as on the Tillers day was the father, Govind Pawar. Thus, he became entitled to purchase the tenanted

land. Father Govind Pawar was alive till 1970. After his death, name of Gopal Pawar was recorded in the records of rights in capacity as '*joint family manager*'. Therefore, it is crystal clear that the tenancy rights devolved upon all the entire family members after the death of original tenant, Govind Pawar. This is the reason why the name of Gopal Pawar was mutated in capacity as '*joint family manager*'.

5) So far as reliance of Mr. Bansode on Agreement for Sale executed by the owner, Laxmibai Kulkarni in the year 1975 is concerned, in my view, the said document does not confer ownership on Gopal Pawar for two reasons. Firstly, the transaction did not fructify into a transaction of sale. The said document merely remained as an Agreement for Sale. Therefore, it cannot be stated that title devolved in the name of Gopal Pawar through the said agreement. Secondly, the right of the original owner, Laxmibai Narayan Kulkarni to execute Agreement for Sale is itself questionable. This is because in the year 1975, said Laxmibai Narayan Kulkarni was infact divested of her ownership rights in respect of the land bearing Gat No.536 and the statutory tenant had become entitled to purchase the same. In my view, therefore on both counts, it cannot be stated that Gopal Pawar became exclusive owner in respect of the land bearing Gat No 536.

6) After considering the overall conspectus of the case, I do not find any patent error in the findings recorded by the Trial and the first Appellate Court that the land bearing Gat No.536 is also a joint family property.

7) So far as partition effected between brothers on 26 January 1991 is concerned, the same was only in respect of the lands bearing Gat No.526 and 530. It is not the case of Defendant Nos.1 to 4 that land bearing Gat No.536 was retained by Gopal Pawar in lieu of his share in the said partition in lands bearing Gat No.526 and 530. Admittedly, Gopal Pawar received his own share in lands bearing Gat No.526 and 530. He attempted to exclude land Gat No.536 on fallacious claim of exclusive ownership, which got demolished before the trial and the first Appellate Court. In my view, therefore mere effecting of partial partition on 26 January 1991 did not have the effect of defeating the claims of Plaintiffs to claim shares in respect of Gat No.536.

8) I am therefore of the view that the Trial and the first Appellate Court have not committed any palpable error for interference of this Court under Section 100 of Civil Procedure Code, 1908. No substantial question of law is involved in the Appeal. The Second Appeal is accordingly **rejected**.

9) With rejection of the Appeal, the Interim Application taken out for stay does not survive. The same also stands disposed of.

[SANDEEP V. MARNE, J.]

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