



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 375 OF 2008

Babarao S/o Bhagwan Shidurkar (Dead)
through his legal representatives :

- 1A) Ushatai Wd/o Babarao Shidurkar,
Aged about 71 years, Occu. : Homemaker,
R/o. Deshmukh Wadi, Wani,
Tah. Wani, Dist. Yavatmal.
- 1B) Rekha W/o Vasantryao Lade,
Aged about 51 years, Occu. : Housewife,
R/o. Vitthal Wadi, Wani,
Tah. Wani, Dist. Yavatmal.
- 1C) Dinesh S/o Babarao Shidurkar,
Aged about 42 years, Occu. : Labourer,
- 1D) Pravin S/o Babarao Shidurkar,
Aged about 38 years, Occu. : Labourer,

Nos.1C and 1D R/o. Deshmukh Wadi,
Wani, Tah. Wani, Dist. Yavatmal.

.... **APPELLANTS**

// VERSUS //

Shri Bajiram S/o Bhagwan Shidurkar,
Aged about 49 years, Occu. : Pensioner,
R/o. Rural Hospital, Ward No.23(Old),
Wani, Tah. Wani, Dist. Yavatmal.

.... **RESPONDENT**

Mr. R. D. Dandwate, Advocate for Appellants.
Mr. A. A. Mardikar, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 11.10.2024.

DATE OF PRONOUNCING THE JUDGMENT : 25.10.2024.

JUDGMENT.

1. This appeal is preferred against the Judgment and decree passed by the District Judge-1, Panddharkawada (Kelapur) in Regular Civil Appeal No.40 of 2004, dated 05.03.2008, which was preferred against the Judgment and decree passed by the Joint Civil Judge, Junior Division, Wani in Regular Civil Suit No.10 of 1999, dated 01.03.2004. The suit and the appeal both were dismissed.

2. Brief facts of the plaintiff's case are as follows :

(i) The plaintiff and the defendant are real brothers. The plaintiff filed a suit against the defendant for possession of his half share by partition in Plot No.15/23 of Nazul Sheet No.16, admeasuring 33 x 33 sq.ft. at city Wani, Tahsil Wani, District Yavatmal, which is the subject matter of the suit.

(ii) The plaintiff contended that he was looking after and maintaining his old aged father, therefore, his father executed a registered Gift-deed dated 16.02.1978, gifting his half share out of the said plot in plaintiff's favour. By the said Gift-deed, the plaintiff become the owner of that half share and subsequently constructed a house thereon and started residing there. The plaintiff further contended that his father died on 14.04.1979 and mother died on

15.05.1995. The plaintiff looked after his father and mother. The partition of remaining part of said plot was not done. Therefore, the plaintiff prayed for partition and separate possession in the remaining half share in the suit property.

(iii) The defendant resisted the claim of the plaintiff and submitted that he is the owner of the said plot. The plaintiff has executed a relinquishment-deed dated 23.04.1981 in his favour, upon which plaintiff's mother had also impressed her thumb. The defendant further contended that the father of the plaintiff and defendant executed a gift-deed in favour of the plaintiff for half portion of plot No.15/23 for the purpose of obtaining of a loan, as the plaintiff was in the need of a loan amount for the construction of his house. The plaintiff, at the time of registration of the gift-deed, stated that unless and until the gift-deed is not registered, loan could not be sanctioned. Therefore, the alleged transaction of gift-deed was not legal. But, it was a part of transaction of partition between the plaintiff, the defendant and their parents. The defendant is in possession of the suit property. Accordingly, he prayed for the dismissal of the suit.

3. The learned trial Court held that plaintiff had no legal right to claim partition of the suit property, as he has relinquished his

share in it by Relinquishment deed Exhibit-40. The learned first appellate Court also held that defendant is the owner of the suit property as per the relinquishment-deed executed by the plaintiff.

4. This Court while admitting this appeal the following substantial question of law was formed :

“Whether the agreement Exhibit-40 could be treated as a relinquishment deed and as such, was it compulsorily registrable?”

5. The learned Advocate for the plaintiff submitted that the judgment and decree passed by the learned trial Court as well as the learned first appellate Court are illegal and erroneous. He further submitted that the Relinquishment-deed – Exhibit 40 is unregistered document. As per Section 17(1)(b) of the Registration Act, 1908 (for short the, “Registration Act”), if the such document is not registered, it is inadmissible and cannot be admitted as an evidence. He is relying upon the following precedential laws :

(i) ***Yellapu Uma Maheshwari & Anr., Vs. Buddha Jagadheeswararao & Ors.***, in ***(2015) 16 SCC 787***, in para 13 reads as follows :

“13. Section 17(1)(b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable

property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered u/s 17 of the Act.

(ii) ***Chandrabhaga Kolhe (Deceased) through LRs. Ramesh S/o Kashinath Kolhe & Ors. Vs. Suryabhan S/o Champatra Shende (Deceased) through LRs. Smt. Kamlabai W/o Suryabhan Shende & Ors.,*** in ***2023(5) Mh.L.J. 399***, in which it was held that, “the relinquishment deed requires to be registered otherwise it is not admissible in evidence.”

(iii) ***M. Venkataramana Hebbar (Dead) By LRs. Vs. M. Rajagopal Hebbar & Ors.,*** in ***(2007) 6 SCC 401***, in which it is held that, “any co-owner can cause a severance in the status of joint family by expressing his unequivocal intention to separate. Such intention can be expressed even by filing a suit for partition. But, despite such separation in the joint status, parties may continue to possess the lands jointly unless a partition of the joint family property takes place by metes and bounds.”

6. The learned Advocate for the plaintiff submitted that in view of the *ratio* laid down in the above precedential law, the judgments and decrees passed by both the Courts are illegal,

erroneous and not sustainable in the eyes of law. It is lastly prayed to allow the appeal and set aside the impugned judgments of both the Courts.

7. The learned Advocate for the defendant submitted that the judgment and decree passed by the learned trial Court are based on sound reasons and findings on both fact and law. He further submitted that when there is concurrent finding of fact, in the second appeal, there is no any ground to interfere in it. No such substantial question of fact remains for consideration. He therefore, submitted that the grounds of appeal have no merit and there is no scope of interference in the impugned judgment and decree of the first appellate Court as well as the judgment and decree of the trial Court. The learned Advocate for the plaintiff lastly prayed to dismiss the appeal.

8. Perused the record and proceedings, and the judgments and decrees passed by the first appellate Court and trial Court.

9. The unregistered relinquishment-deed was signed by the plaintiff, the defendant and their mother is at Exhibit-40. No doubt, mother's name was erased, but it was erased because, her name is written at the top of Exhibit-40. On this basis, the said document

cannot be held to be false and fabricated. It is because after the death of father of the plaintiff and the defendants, their names are recorded to the record of rights of the suit properties as legal heirs, that mutation entry Exhibit-38, is not challenged by the plaintiff.

10. No doubt that a relinquishment-deed requires registration as per Section 17(1)(b) of the Registration Act. However, law is settled that when such a document is not registered but it is acted upon, the said document can be used as a corroborative piece of evidence for asserting family arrangement and the conduct of parties as held in the precedential law of *Thulasidhara and another Vs. Narayanappa and others*, reported in *(2019) 6 SCC 409*.

11. In the case of *B. L. Sreedhar and others Vs. K. M. Munireddy (Dead) and others*, reported in *(2003) 2 SCC 355*, it was held that, “effect of creating substantive rights as against the person estopped, where rights are involved estoppel may be described as a rule creating or defeating a right as well as a rule of evidence”. It is further observed that, “lapse of time and delay are most material for drawing inference of waiving of rights. It may be inferred because of conduct by which the other party was placed in such a situation to act upon that waiver. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right

or such conduct as warrants the inference of the relinquishment of such right.”

12. Admittedly, a mutation entry Exhibit-38 was effected after relinquishment deed Exhibit-40, which was not challenged by the plaintiff. The plaintiff has not explained as to under what circumstances, he made a signature on the relinquishment-deed Exhibit-40. Thus, the said two conducts of the plaintiff are sufficient to draw an inference that the said document Exhibit-40, though unregistered, was acted upon much earlier to the filing of the suit, which is proved by the relinquishment-deed Exhibit-40 and mutation entry Exhibit-38.

13. The Hon’ble Supreme Court in case of ***Gurnam Singh Vs. Lehna Singh***, reported in ***(2019) 7 SCC 461***, laid down law that, in case of second appeal, there must be an error in the law or procedural error to justify interfere in the judgments of the trial Court and the first appellate Court. The failure to appreciate the evidence properly or an error in to the procedure while recording evidence can be pointed out in the findings of the first appellate Court or the trial Court. In the present case, no such illegality and perversity is seen. There are concurrent findings in favour of plaintiff. Therefore the precedential law of ***Yellapu Uma Maheshwari, Chandrabhaga Kolhe***

and ***M. Venkataramana Hebbar*** which were relied upon by the plaintiff, are not helpful to him. It is because Relinquishment deed Exhibit-40 has been acted upon and as per Section 115 of the Indian Evidence Act does not permit the defendants to challenge such document as he is estopped from challenging it. Thus, such an old document can not be challenged in the Court of justice, after it is acted upon.

14. Both the Courts have believed relinquishment-deed Exhibit-40. There are concurrent findings of facts by both Courts in favour of plaintiffs. No illegality or perversity has been pointed out in the judgments of the trial Court as well as first appellate Court. Both the Courts have rightly reappreciated the evidence and the matter before it. The reasons and findings are rightly given by both the Courts. Therefore, the case laws cited by the plaintiff are not helpful to them and hence it is relied upon.

15. There is no scope for interference in the impugned judgments and decrees of the first appellate Court and the trial Court. Therefore, the argument of the learned Advocate for the appellant is not acceptable in this regard. Therefore, the appeal deserves to be dismissed. The document Exhibit-40 is rightly treated as a relinquishment-deed executed by the plaintiff. Hence, answer to

substantial question of law is that, agreement at Exhibit-40 is a relinquishment-deed although not registered, the legal $\frac{1}{2}$ right of the defendant in the suit property is not defeated. The plaintiff has no legal right to claim partition.

16. The respondent is compelled to face this appeal without any substance and justification. He must have incurred some amount for it. Therefore, he is entitled for costs of Rs.10,000/-. Hence, the following order :

- (i) The appeal is **dismissed**.
- (ii) The appellants are directed to pay costs of **Rs.10,000/-** (Rs. Ten thousand only) to the respondent within four months. If the costs is not paid within four months, the appellants are directed to pay interest thereon @ 9% per annum, till realization at the entire amount, from the date of this judgment.

(SANJAY A. DESHMUKH, J.)