



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

Second Appeal No. 163 of 2013

[Sau Sugandabai w/o Ganesh Kamble ..vs.. Dayaram s/o Domaji Gude and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. G. Karmarkar with Mr. Bhushan Sachdev, Advocates for the
appellant
Mr. R. D. Wakode, Advocate for respondent no. 1
Mr. K. R. Jain, Advocate h/f Mr. V. S. Giramkar, Advocate for respondent
nos. 2 and 3
None for respondent nos. 6 to 12

CORAM : ANIL L. PANSARE J.

DATED : 26-11-2024

Heard.

2. The appeal has been admitted on following
substantial question of law.

*“Whether the Courts below could rely upon the
unregistered document of relinquishment, allegedly
executed by the plaintiff, though stoutly denied by
her, as the instrument depriving her right of
partition also in the wake of mandate of Section 6
of the Hindu Succession Act [As amended with
effect from 19th September, 2005] ?”*

3. Admittedly, the document of relinquishment is
unregistered and, therefore, cannot be relied upon in
favour of or against the party. The coordinate Bench of
this Court in the case of ***Gangaram Sakharam Dhuri
since deceased through L.R. Vishnu and ors. Vs.
Gangubai Raghunath Ayare and ors. [2007(5) Mh.L.J.
136]*** has held that relinquishment of property valued at
more than Rs. 100/- is compulsorily registrable in terms
of Section 17 of the Indian Registration Act, 1908. The

effect of non-registration of document is provided under Section 49 of the Indian Registration Act, which provides that document required to be registered under Section 17, if not registered, shall be not received as evidence of any transaction affecting such property or conferring such power.

4. Further, the Supreme Court in the case of ***Yellapu Uma Maheshwar and anr. Vs. Buddha Jagadheeswararao and ors. [(2015) 16 SCC 787]***, while considering effect of Sections 17 and 49 of the Indian Registration Act, held thus :

“15. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.”

Thus, the Supreme Court held that the document which is compulsorily registrable under section 17(1)(b), is inadmissible in the evidence, if not so registered.

5. In the present case, admittedly, the deed of relinquishment was not registered and, therefore, is inadmissible.

6. Learned counsel for respondent no. 1 submits that though the deed of relinquishment was not registered, it was shown to the appellant while she was in witness box and she admitted her signature. He further submits that the respondents have mutated their names in the revenue record on the basis of said relinquishment deed. The appellant appeared before the revenue officer and admitted execution of relinquishment deed. Accordingly, it is argued that by conduct and by execution of deed, the appellant had relinquished her right in the suit property.

7. To my mind, since the effect of non-registration having been provided under the statute, the effect thereof cannot be neutralized in the manner as argued by learned counsel for respondent no. 1. The fact remains that appellant is entitled to seek partition but for execution of the relinquishment deed, which is found to be inadmissible in evidence.

8. Both the Courts below have failed to consider the effect of Section 17 read with Section 49 of the Indian Registration Act and have deprived the appellant of her valuable rights of seeking partition in the property.

9. So far as the mandate under Section 6 of the Hindu Succession Act (as amended with effect from 19-9-2005) is concerned, there is no dispute that the appellant has right to seek partition in the capacity of

coparcener. The argument of learned counsel for respondent no. 1 is/was that she has relinquished her right over the suit property which is found to be without any substance. The substantial question of law is answered accordingly.

10. Resultantly, the second appeal is allowed. The judgment and decree dated 8-10-2008 passed by 6th Joint Civil Judge Junior Division, Nagpur in Regular Civil Suit No. 1571/2005 as also the judgment and decree dated 30-8-2011 passed by the Ad-hoc District Judge – 3, Nagpur in Regular Civil Appeal No. 623/2008 are quashed and set aside. The regular civil suit is restored on file of Civil Judge Junior Division, Nagpur to decide the same afresh in accordance with law and what has been stated in the body of the order.

11. The parties shall appear before the trial Court on 9-12-2024.

(Anil L. Pansare, J.)