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

SECOND APPEAL NO. 97 OF 1999

Shivram Dada Borse and another .. Appellants
Versus
Uttam Dada Borse
Since deceased through his L.Rs.
Indubai Uttam Borse and others .. Respondents

Shri B. A. Darak, Advocate for the Appellants.
Shri Shivaji M. Nawale a/w Shri Sayaji S. Nawale, Advocate for Respondent Nos. 1-A to 1-D.
Mrs. Jayashree Nawale, Advocate for the Respondent Nos. 1-D-i to 1-D-iii and 2B – absent.

CORAM : SHAILESH P. BRAHME, J.
DATE : 29TH JULY, 2025.

FINAL ORDER :

. Having heard both sides, what emerges in the present second appeal is to determine as to whether suit lands are the self acquired properties of the respondent No. 1 – plaintiff or the joint family properties. The plaintiff has adduced evidence of four witnesses to demonstrate that those are his self acquired properties and he had source of income to acquire those properties. As against that the appellants examined two witnesses.

2. It's case of the plaintiff that land gut No. 228 was purchased by him vide sale deed dated 19.04.1966 at Exhibit 26 from P.W. No. 3 – Saluba. It was jointly purchased by him to the

extent of 13 Acres 06 Guntha and one Shankar to the extent of 09 Acres 07 Guntha for Rs. 1,000/-. He was working with vendor as an agricultural labourer and he was to receive arrears of his salary from him for about ten to fifteen years. On the basis of that source land to the extent of 13 Acres 06 Guntha was purchased. It's his further case that land gut No. 229 to the extent of 02 Acres (80 Guntha) was purchased vide sale deed dated 23.03.1982 jointly by himself and appellant No. 1's wife – Jijabai. He was owner to the extent of 80R and Jijabai to the extent of 3H 84R out of gut No. 229.

3. The suit is contested by the appellant on the ground that it was a joint family property and possession is common. Those were purchased from the income of the joint family.

4. There is evidence on record to prove sale deed Exhibit 26 for purchasing land gut No. 228. P.W. No. 3 Saluba, who is vendor of Exhibit 26 admitted the contents. He was working with vendor and he was to receive arrears of his salary from the vendor, which could approximately fetched to the extent of Rs. 600/-, the consideration shown in Exhibit 26 and the probable amount recoverable from the vendor is consistent with his share of consideration. The evidence of the plaintiff shows that there was source for the plaintiff to purchase the suit land. I find that findings recorded by the lower Appellate Court that there was independent source of income for the plaintiff to purchase the land is justified.

5. Pertinently, the purchasing of suit land gut No. 229 has not been disputed. A mutation entry at exhibit 27 shows that it was jointly purchased by the plaintiff and Jijabai. The appellant failed to explain as to how the area of land gut No. 229 purchased to the extent of the plaintiff is only a joint family property. From the same gut number and self same transaction his wife also purchased land go the extent of 3H 84R. The lower Appellate Court has rightly recorded finding in that regard.

6. It is vehemently contended that plaintiff was of a tender age and considering his meager income, it could not have been possible for him to purchase the property. He was competent to execute contract. In the wake of proof of sale deed and the evidence showing independent source of income, the submission made by learned counsel cannot be countenanced.

7. I have gone through the cross examination of P.W. No. 2, which would indicate that plaintiff was working with him and he was in arrears of the salary. The land was sold to the plaintiff by registered sale deed. The sale deed exclusively records name of the plaintiff. The cross examination would not enure to the benefit of the appellants.

8. It is further contention that whole claim of the plaintiff is imaginary, because huge area from gut No. 228 is purchased by the plaintiff for meager amount. In the absence of any reliable

evidence, these submissions cannot be accepted. There is tangible documentary evidence on record in the form of Exhibit 26 having probative value and by implication of Sec. 91 of the Evidence Act, it's contents will have to be accepted.

9. The appellant – defendant failed to make out a case that there was source of income to the joint family. Even such issue was not framed by the Trial Court. Merely objecting the transaction of the plaintiff and contending that it was a joint family property would not help the appellant unless sufficient evidence is brought on record indicating source of income. On the contrary, it has come on record that major chunk of the land belonging to the joint family was dry land.

10. As both suit lands are shown to have been purchased by the plaintiff by leading cogent evidence, I find that there is no perversity or patent illegality in the judgment and decree passed by the lower Appellate Court. The substantial questions of law pressed in to service hold no water.

11. For the reasons stated above, second appeal is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

bsb/July 25