



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

**SECOND APPEAL NO. 104 OF 1996**

1. Himatrao Hiranman Patil,
2. Jagatrao Hiranman Patil,  
  
No.1 and 2 residing at Mhasawad,  
Tal. And District – Jalgaon.
3. Shantabai w/o Onkar Patil,  
R/o Bamhane, Tal. Shindkhede,  
Dist. Dhule.
4. Kamalabai w/o Tukaram Patil,  
R/o Hingone, Tal – Chopada,  
Dist. Jaogaon.
5. Vimalbai w/o Madhukar Pawar,  
R/o Amarathe, Tal. Sindhkhede,  
Dist. Dhule

....(Original Plaintiffs)

***VERSUS***

Yashwant Bhoju Patil,  
Agriculturist, Residing at Mhasawad,  
Tal and Dist. Jalgaon

....(Original Defendant)

...  
Mr. B. A. Ahemad and Mr. A. B. Gatne, Advocate for Appellants  
Mr. R. P. Phatake, Advocate for Respondent

.....

**CORAM : ROHIT W. JOSHI, J.**

**Dated : 28<sup>TH</sup> FEBRUARY, 2025**

**ORAL JUDGMENT :-**

. This is an appeal by the original plaintiffs who had filed  
a suit for perpetual injunction against the

respondent/defendant, *inter-alia* praying that he be restrained from disturbing their possession over suit property which comprises of agricultural land bearing Gut No.259 situated at village Mhasawad, Taluka and District Jalgaon. The brief facts of the case are as under.

2. The original plaintiffs are real brothers and sisters, the defendant is biological brother of the plaintiffs. However, the defendant was given in adoption on 02.06.1966 to his paternal uncle namely Bhoju Patil. The original name of defendant was Pandharinath son of Hiranman Patil and after his adoption his name was changed to Yashwant Bhoju Patil. There was a partition in the family of Hiranman Patil on 07.03.1967. In this partition, the suit property wherein Gut No.259 was allotted to the share of Mandabai Hiranman Patil, who is the mother of the plaintiffs and also biological mother of the defendant for maintenance. The allotment of land in favour of Mandabai is evidenced by documents at Exhibits 38, 39 and 40.

3. The entire land bearing Gut No.259 is allotted to Mandabai under the partition. However, three documents at

Exhibits 38, 39 and 40, provide that after the demise of Mandabai 1/3 portion allotted to Mandabai would go to the share of her sons; Himatrao, Jagatrao and also to Yashwant, who is the biological son given by adoption on 02.06.1966. Mandabai has expired on 18.08.1882, the question that falls for consideration now is after the death of Mandabai on 18.08.1882, whether the 1/3 portion in gut No.259 will be inherited by the defendant as mentioned in Exhibits 38, 39 and 40, although, he was already given in adoption on 02.06.1966.

4. The plaintiffs filed the suit as aforesaid seeking simpliciter relief of injunction that the defendant should be restricted from disturbing their possession and interfering cultivation of land bearing Gut No.259. The defendant has opposed the suit relying upon the documents at Exhibits 38, 39 and 40, which states that after death of his biological mother, Mandabai, the said property will come to his share. The defendant has also stated in the written statement that Mandabai was residing with him during her lifetime and he was already in cultivating possession in the suit property during the lifetime of Mandabai.

5. Apart from this, the defendant has raised a legal objection to tenability of the suit stating that the suit has framed and filed was not maintainable in as much as the plaintiffs had not sought any relief of declaration of title. The defendant states that having regard to the facts of the case, a suit simpliciter for injunction was not maintainable.

6. The learned Trial Court has decreed the suit in favour of the plaintiffs vide judgment and decree dated 10.03.1989. The learned Trial Court has considered the revenue record i.e. crop statement, Exhibit 30, which records entry with respect to cultivation of the suit property from 1983-1984 to 1987-1988 and 7/12 extract which demonstrates possession of the plaintiffs to grant the decree of perpetual injunction in favour of the plaintiffs. The defendant has relied upon receipts regarding payment of land revenue at Exhibit 47 to 80, which have been discarded by the learned Trial Court on the ground that the Gut number of land was not mentioned in the said receipts and admittedly, the defendant had other agricultural lands also. The learned Trial Court has observed that the receipts may be pertaining to the other agricultural land

owned by the defendant and therefore those receipts are not sufficient to establish his possession over the suit property. The defendant had examined witnesses, who had deposed about his possession over the suit property. However, their deposition is discarded since they had stated in the cross examination that they could not tell name of the person who was taking the crops from the suit property.

7. Aggrieved by the judgment and decree passed against him by the learned Trial Court, the defendant preferred First Appeal being Regular Civil Appeal No.118 of 1989. Appeal preferred by the defendant came to be allowed vide judgment and decree dated 17.07.1995. The learned Appellate Court has recorded that the mother Mandabai alone was not placed in possession of the suit property. The property was allotted to the share of Mandabai and defendant for maintenance and both were placed in possession at the time of partition in the year 1967. The learned Appellate Judge has also recorded that from 1967 till 1983, the plaintiffs could not prove their possession over the suit property. Lastly, it is recorded that despite his adoption, portion of suit property was given in the partition to the defendant Bhoju and he was entitled to retain

the same.

8. The learned First Appellate Court has also observed in terms that suit simpliciter for injunction was not maintainable, although, it is not so held in categorical terms.

9. The present Second Appeal is filed by the original plaintiffs in this backdrop of facts, the appeal was admitted vide order dated 20.08.1997 on the following substantial question of law;

*4. The Lower Appellate Court committed an error in law in giving a finding on issue no.1 in the negative although Section 14(1) of the Hindu Succession Act. Provided clearly that the Appellants being the sons and daughter of their mother Mandabai, the respondent having been adopted by his adoptive father in 1966 losing his right, interest in and title to the agricultural land block no.259 situated in Mhasawad, Tal. And District. Jalgaon.*

10. The undisputed facts of the case are that there was a partition in the family of plaintiffs i.e. biological family of the defendant on 07.03.1967. In this partition the suit property was allotted to the share of mother Mandabai for maintenance. It is also undisputed that the defendant was given in adoption to his paternal uncle on 02.06.1966. The fact of adoption and the fact of partition are not in dispute.

The dates are also not in dispute.

11. The suit property was allotted to the share of Mandabai in its entirety. The three documents at Exhibits 38, 39 and 40 clearly recite that the suit property is allotted to Mandabai towards her maintenance and that after her demise  $1/3^{\text{rd}}$  share each shall be given to the share of her sons named in the said documents. It is undisputed that names of plaintiff No.1, plaintiff No.2 and the defendant are mentioned in the said documents at Exhibit 38, 39 and 40, upon whom the property was to devolve after demise of Mandabai. It is not disputed that under the arrangement of partition as evidenced by these three documents, the suit property was allotted to Mandabai for her maintenance during her lifetime.

12. Before coming to the controversy, as regards, whether the defendant, who was given in adoption prior to the date of partition can claim right over the suit property by virtue of the said document, it is necessary to determine what will be the nature of right of deceased Mandabai under the said three documents.

13. In this regard, we need to refer to Section 14 of the

Hindu Succession Act, 1956 which states that a property possessed by a female Hindu, whether acquired before or after commencement of the Act shall be held by her as a full owner and not as a limited owner. Explanation to Section 14(1) states that even a property in possession of a Hindu female in lieu of her maintenance will fall within the definition of the term, 'property', for the purpose of Section 14(1). It is settled by a catena of judgments that in families governed by Hindu Law, a wife has right over the properties of her husband, be they his ancestral properties or personal properties. By way of statutory mandate of Section 14(1) of the Hindu Succession Act, such limited right of maintenance ripens into a full estate of absolute ownership. The limited right which is conferred under three documents at Exhibits 38, 39 and 40 is therefore a full ownership right in view of mandate of Section 14(1).

14. As stated above, the position is no longer *res-integra*. However, for ready reference, I may refer to judgment of the Hon'ble Supreme Court that in the matter of ***Vaddeboyina Tulasamma Vs. Vaddeboyina Sesha Reddi, AIR 1977 SC 1944.*** In that view of the matter it has to be held that although, limited right of maintenance is granted under the documents

at Exhibit 38, 39 and 40, the property allotted under the said document was absolute property of the mother Mandabai, who has expired on 18.08.1982.

15. Rules of succession of a female Hindu are governed by Sections 15 and 16 of the Hindu Succession Act. It is not in dispute that husband of Mandabai namely Hiranman had pre-deceased her. Therefore, by virtue of Section 15(1) (a) read with section 16, the sons and daughters of Mandabai will inherit her property. Now since, the defendant was already given in adoption on 02.06.1966, he was not Mandabai's son as on the date of her demise on 18.08.1982. The succession opens immediately on demise of Mandabai on 18.08.1982, on which date, the defendant cannot be treated to be her son and as such he will not be entitled to inherit the property of Mandabai.

16. This deals with the above discussion with right of ownership and title of plaintiffs over the suit property.

17. However, the suit is for injunction and therefore, it is necessary to determine as to who was in possession of the suit property after death of Mandabai. It cannot be disputed that Mandabai alone was in possession of the property and was

enjoying the same during her lifetime. The learned Appellate Court has held that the defendant was in possession of the suit property alongwith Mandabai. The learned First Appellate Court recorded that the property was not given to Mandabai alone, but it was given to Mandabai alongwith defendant. This finding is absolutely perverse and contrary to the express recitals of the documents at Exhibits 38, 39 and 40.

18. The contention of the defendant is that although, he was given in adoption, Mandabai was residing with him during her lifetime and therefore he was cultivating the property. He claims to be in possession of the suit property accordingly. This contention is falsified by the documents i.e. crop statements and 7/12 extract, which have been properly considered by the learned Trial Court in its judgment to hold that the plaintiffs had properly established their possession over the suit property. I am afraid even if during lifetime of Mandabai, the defendant was cultivating the suit property, it cannot be said that he was in possession of the suit property. It is obvious that the property belonged to Mandabai and even if the version of the defendant is accepted on its face value, it would mean that he was merely cultivating it for and on

behalf of Mandabai. The defendant cannot claim independent possession and oppose prayer for injunction on the basis of such alleged possession. Possession of Mandabai during her lifetime cannot be disputed. The finding of the learned First Appellate Court regarding joint possession is absolutely perverse and contrary to the undisputed documents on record including the document at Exhibit 40, which is the foundation of the right of defendant.

19. With this, I come to the legal objection raised by the defendant that suit simpliciter for injunction was not maintainable and the suit should not have been dismissed on this ground alone. To buttress this contention, the learned Counsel for the defendant has placed reliance on three judgments of the Hon'ble Supreme Court viz;

- i. Kayalulla Parambath Moidu Vs. Namboodiyil Vinodan AIR ONLINE 2021 SC 699*
- ii. T. V. Ramkrishna Reddy Vs. M. Mallappa AIR 2021 SC 4293.*
- iii. Un-reported judgment dated 20.02.2024 in Civil Appeal No.722 of 2012.*

20. In the case of Kayalulla, relied upon by the learned

counsel for the defendant, the case of the plaintiff was based on a registered assignment deed executed in the year 1977. On the other hand, the defendant staked claim over the suit property contending that the suit property was not included in the assignment deed relied upon by the plaintiff. The defendant claimed that the suit property belonged to his father by virtue of a document of the year 1974. It was the case of the defendant that after the death of the father, the defendant and his mother had applied for a purchase certificate under the provisions of Kerla Land Reforms Act and the land was allotted to them by the competent authority under the said Act. It is thus clear that in the said judgment before the Hon'ble Supreme Court, parties were staking claim on the basis of different documents. Claim of the defendant was based on allotment order and document issued by competent statutory authority. Apart from this, whether the suit property was included in the alleged title deed of the plaintiff was also a fact and dispute. In the case of ***T. V. Ramakrishna Reddy***, the plaintiff claimed right over suit property through registered sale deed dated 13.04.1992 whereas the defendant also claimed to have purchased the

same property under a registered sale deed dated 05.04.1984. Thus, the claim of the defendant was based on a registered document executed prior in point of time. In the case of Ganga Bai Menariya, the plaintiff claimed right over the property on the basis of alleged lease granted to her by the Gram-Panchayat. However, right of Gram-Panchayat over the property and its authority to grant lease itself was doubtful.

21. In all these cases, the Hon'ble Supreme Court has held that the question of ownership was a vexed and contested question which could not have been decided in a suit simpliciter for injunction. In the peculiar facts of the said cases, it was held that suit simpliciter for injunction was not maintainable and it was necessary for the plaintiffs to seek declaration of title.

22. However, it is pertinent to state that in the matter of ***Kayalulla Parambath Moidu*** in paragraph 13, the Hon'ble Supreme Court has held that when necessary pleadings regarding title are already existing and appropriate issues are framed on which parties lead the evidence, the Court can decide the issue of title in a suit simpliciter for injunction, if the answer involves simple and straight forward questions.

23. In my considered opinion in the present case, the parties are not staking claims over the property on basis of any disputed documents like in the cases before the Hon'ble Supreme Court. The parties are staking claim through deceased Mandabai, who is mother of the plaintiffs and also biological mother of the defendant, who was given in adoption prior to her demise. The documents at Exhibits 38, 39 and 40 are not in dispute. The fact of adoption of defendant is also not in dispute. The question of title is required to be answered in the light of interpretation of undisputed documents on record. The documents at Exhibits 38, 39 and 40 which are admitted documents, grant a right of maintenance to Mandabai during her lifetime and recite that after her demise, the property mentioned in the said documents will be allotted to the plaintiff no.1, 2 and to the defendant No.3. The question to be decided is as to whether on the basis of said documents, the defendant No.3 who was already given on adoption will be entitled to inherit the said property of Mandabai or the said property will go to the legal heirs of Mandabai as per Sections 15 and 16 of the Hindu Succession Act. This is a pure and simple legal question which

can be decided in a suit simpliciter for injunction. The question has been decided as above holding that the adoption disrupts cord of the defendant with his biological family and therefore on the date of death of his biological mother, the defendant cannot inherit her property as a son.

24. As regards physical possession over the suit property also, the learned Trial Court has recorded proper findings on interpretation of evidence on record, the findings of the learned First Appellate Court on the question of possession are absolutely perverse and contrary to the document at Exhibit 40, which is the foundation of the claim of defendant.

25. In that view of the matter, I am not inclined to accept the legal submission made by the learned Advocate for the defendant that suit simpliciter for injunction was not maintainable in the present case.

26. The question of law is accordingly answered holding that in view of Section 14(1) of the Hindu Succession Act, Mandabai had become absolute owner of the suit property by virtue of documents at Exhibits 38, 39 and 40 and further that the defendant had lost right to inherit the property of his

biological mother by virtue his adoption on 02.06.1966. It is held that after the demise of Mandabai, the property mentioned in Exhibits 38 and 39 will go to the plaintiff Nos.1 and 2 as per the said documents and the property mentioned in Exhibit 40 will devolve on all the plaintiffs in equal share.

27. The Second Appeal is accordingly allowed by quashing and setting aside the judgment and decree dated 17.07.1995 passed by learned Joint District Judge, Jalgaon in Regular Civil Appeal No.118 of 1989 and confirming the judgment and decree dated 10.03.1989 passed by the learned joint Civil Judge Junior Division, Jalgaon in Regular Civil Suit No.30 of 1988.

28. Parties are directed to bear their own cost.

( ROHIT W. JOSHI, J )