



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

**SECOND APPEAL NO. 248 OF 2024
WITH CIVIL APPLICATION NO. 4555 OF 2025**

**Bhalchandra Ramkisan Nagle (nagla) Thr Gpa Jagdish Bhalchandra Nagla
VERSUS
Subhash Ramkisan Nagla**

Mr. P. P. Jadhav, Advocate for Appellant
Mr. S. H. Tripathi, Advocate for Respondent

CORAM : R. M. JOSHI, J.

DATE : 22 July, 2025

PER COURT :-

1. This appeal is under Section 100 of the Code of Civil Procedure (for short “CPC”) taking exception to the judgment and decree dated 10.10.2023 passed by District Court, Jalgaon in Regular Civil Appeal No. 28/2018, whereby the judgment and decree passed by the trial Court in Special Civil Suit No. 243/2012 dated 08.02.2018 dismissing the suit came to be reversed and the suit was decreed.

2. The facts which led to the filing of this appeal can be narrated in brief as under :-

Admittedly, plaintiff and defendant are real brothers and only sons of late Mathurabai. It is further not in dispute that Mathurabai had purchased

the suit property bearing C. T. S. No. 2168/83B and at that time appellant and respondent were minor. Thus, it is not the case of the parties nor it can be that they contributed in the purchase of the said property. Further it is not the case of the parties that the suit property is purchased out of the income of joint family or that any nucleus was available with family for purchase of the same. In this backdrop, after death of Mathurabai, plaintiff filed suit for partition of the suit property. Defendant opposed the said suit by contending that already partition has been effected in respect of the suit property between the brothers. It is further contended that the plaintiff as well as defendant had purchased adjoining properties of the suit property and that there was understanding between them with regard to the portions to be held by each one. Thus dispute was sought to be made in respect of the other properties which are not subject matter of the suit.

3. With these pleadings, parties led evidence. Learned trial Court dismissed the suit by accepting the contentions of the defendant. This judgment and decree came to be challenged in appeal before the First Appellate Court. First Appellate Court by passing impugned judgment set aside the order passed by the trial Court and decreed the suit.

4. Learned counsel for the appellant submits that the First Appellate

Court has committed error in reversing the judgment and decree passed by the Trial Court of dismissal of the suit. It is his contention that since there was a dispute raised with regard to the other properties belonging to the joint family, the suit for partition in the said properties ought to have been entertained by the Trial Court. It is his further submission that since there was admission of the plaintiff about the previous partition, question of decreeing the suit does not arise.

5. Since, this appeal under Section 100 of CPC, unless substantial question of law is involved therein, no cognizance therein could be taken. It would be, therefore, necessary to ascertain as to whether there arises any substantial question of law in this appeal.

6. The facts as noted herein above are not in dispute that the suit property is a house on C. T. S. No. 2168/83B. No other property is a subject matter of the suit. The suit property is admittedly purchased by Mathurabai, mother of plaintiff and defendant. She died intestate. Thus, the provisions of Section 8 of Hindu Succession Act, 1956 would apply to the present case. Plaintiff and defendant being only Class I heirs of the deceased are entitled for equal share in the suit property.

7. Though, it is sought to be contended on behalf of the defendant that there was already a partition, perusal of the evidence indicates that there is no admission given by the plaintiff with regard to the previous partition. The initial burden was on the defendant and prove that there was a partition between brothers and since he has failed to discharge the same, it cannot be said that the findings recorded by the first appellate court are perverse.

8. It is also sought to be argued on behalf of the appellant-defendant that the other properties which are joint family properties are not included in the suit properties and hence suit is not maintainable. Perusal of the written statement does not show any such plea being taken by the defendant. On the contrary, it is admitted fact that plaintiff and defendant have purchased the adjoining properties. In such circumstances even if it is assumed that there was some agreement/understanding between them in respect of their own properties, in absence of any concrete evidence to indicate that the suit property was partition ever, question of not decreeing the suit does not arise.

9. Learned First Appellate Court has rightly taken into consideration the facts involved in this case and the evidence on record and by no stretch of imagination it can be said that the findings recorded by the said Court are perverse in any manner. Thus, this is not the case wherein any substantial

question of law involved in the appeal.

10. As a result of above discussion, appeal must fail. It is dismissed accordingly. Pending Civil Application stands disposed of.

(R. M. JOSHI, J.)

bsj