



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

SECOND APPEAL NO. 319 OF 2015

Jibhau Shamrao Patil

.. Appellant

Versus

Devidas Ukha Patil

.. Respondent

Shri Suraj Tiwari, Advocate h/f Shri N. N. Desale, Advocate for the Appellant.

CORAM : SHAILESH P. BRAHME, J.

DATE : 07TH JULY, 2025.

FINAL ORDER :

. Heard learned counsel Mr. Tiwari holding for Mr. Nilesh N. Desale, learned advocate for the appellant. This second appeal is emanating from concurrent findings of facts recorded by both the Courts below non suiting the present appellant, for relief of perpetual injunction.

2. It is the case of the appellant/plaintiff that land gut No. 342/4 is suit land which was allotted to Devidas in partition. It is further contention that in the partition dated 08.12.2004, gut No. 342/4 was allotted to appellant's wife - Sunandabai. In the year 2004 by oral transaction it was transferred to Sunandabai. Appellant was in continuous possession of the suit land. It is further contended that on the basis of lease agreement he was put in possession of the suit land by the respondent. When he

was obstructed by the respondent, he was required to file suit.

2. The suit is contested by the respondent on the ground that suit land was allotted to the respondent in partition effected on 12.06.1996, bearing gut No. 342/4. He challenged the contentions of the appellant regarding further partition, which is followed by mutation entry No. 1258 as well as oral sale by Sunandabai to him and lease agreement.

3. After considering the evidence on record and rival submissions, both the Courts below recorded finding that there was a partition amongst respondent/Devidas, his mother Rajasbai and uncles Tatyabhau, Bhatu and Abhiman. Respondent/Devidas was allotted gut No. 342/4 and Rajabai was allotted gut No. 342/5. There was no question of any further partition on 08.12.2004 for allotting any share to appellant's wife Sunandabai. The mutation entries and revenue record are for fiscal purposes. It is further held that oral transactions are impermissible in law considering Sec. 17 of the Indian Registration Act and Sec. 54 of the Transfer of Property Act.

4. Learned counsel Mr. Suraj Tiwari for the appellant would submit that registration of the sale transaction is not required because it was family transfer and it is evidenced by the mutation entry and revenue record. He would further submit that Trial Court recorded perverse finding for issue No. 4 as the mutation entry No. 1258 was challenged, but the appeal was

dismissed and the statements were also recorded before effecting the mutation entry. It is vehemently submitted that mutation entry No. 1258 and 7/12 extract would show that transfer and handing over of the possession which is not properly appreciated by both the Courts below. It is further submitted that the deposition of Rajasbai /P.W. 2 has not been properly appreciated. It is submitted that the respondent was in need of money and therefore he was required to alienate the suit land to his sister Sunandabai and the possession of the appellant is legal.

5. Learned counsel has tendered on record statements of respondent/Devidas, Rajasbai and Sunandabai recorded by the revenue authorities at the time of effecting mutation entry No. 1258.

6. I have gone through the record and proceedings. It reveals from record that gut No. 342 was initially joint family property of the respondent's father, uncles and mother. On or about 12.06.1996 a partition was effected amongst them allotting 342/1 to Tatyabhau, 342/2 to Bhatu, 342/3 to Abhiman, 342/4 to the respondent/Devidas and 342/5 to Rajasbai. A share allotted to Rajasbai bearing 342/5 was being cultivated jointly by Rajasbai and Sunandabai wife of the appellant. Thereafter, on or about 08.12.2004 again partition is effected between appellant's wife Sunandabai and respondent/Devidas showing further partition and allotment gut No. 342/4/1 to the extent of 30R to the respondent and 342/4/2 admeasuring 60R to Sunandabai.

7. On or about 12.06.1996, respondent was allotted gut No. 342/4. His mother Rajasbai was allotted gut No. 342/5. Revenue record shows that her share was jointly cultivated by herself and her daughter Sunandabai. When already there was partition by metes and bounds, there was no occasion for further partition of land gut No. 342/4, which was allotted to the respondent. In pursuance of earlier partition mutation entry No. 254 was effected, which was not challenged. Only mutation entry No. 1258 showing allotment of gut No. 342/4/2 to Sunandabai would not take the case of the appellant further. Even if it is presumed that again there was partition on 08.12.2004 allotting 60R of land to Sunandabai, further theory of the appellant her share was transferred by oral sale to him is not only misconceived, but not corroborated by legally admissible evidence.

8. In view of Sec. 54 of the Transfer of Property Act and Sec. 17 of the Indian Registration Act alienation of the property by oral transaction is void. Family transfers or alienation interest the relatives are not the exception to the rule of law for transferring any interest. Both the Courts below have recorded correct findings and no interference is called for.

9. Appellant did not place on record any tangible material to show that possession was actually handed over to him. Although he is trying to rely upon lease agreement, but there is no corroboration. Merely showing his possession in the suit land

would not substantiate claim of lawful possession. Both the Courts below have properly come to conclusion that appellant is not entitled to relief of injunction.

10. Appellant has come with inconsistent pleas. Simultaneously he is claiming oral sale and the partition of 2004. Both the theories are not supported by convincing evidence and the findings recorded by both the Courts below cannot be faulted. I have considered evidence of P.W. No. 2/Rajasbai. Her evidence also would not enure to the benefit of the appellant. The circumstances on which the oral sale transaction was effected is immaterial when the sale transaction is against Sec. 54 of the Transfer of Property Act and Sec. 17 of the Indian Registration Act. I find that no substantial questions of law are involved in the appeal. Second appeal is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

bsb/July 25