



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

SECOND APPEAL NO. 82 OF 2025

Laxmibai Daulat Chandapure .. Appellant

Versus

Sainath Daulat Chandapure and others .. Respondents

Shri Amit A. Mukhedkar, Advocate for the Appellant.

CORAM : SHAILESH P. BRAHME, J.

DATE : 30TH JUNE, 2025.

FINAL ORDER :

. Heard Mr. Mukhedkar, learned counsel for the appellant. Present second appeal is emanating from concurrent findings of facts recorded by the Courts below.

2. Respondents are original plaintiffs, who had filed R.C.S. No. 15 of 2011 claiming declaration of 1/4th share and injunction. It was partly decreed by judgment dated 22.12.2011 granting them 1/4th share each in half portion of suit land i. e. 0.83R of Sy. No. 71. Being aggrieved, R.C.A. No. 03 of 2012 was preferred by the present appellant, who is defendant No. 1. It was dismissed vide judgment and decree dated 28.11.2017.

3. Learned counsel for the appellant has pressed into service substantial questions of law stated in ground Nos. VI, VII and VIII.

4. Learned counsel for the appellant submits that suit was filed without claiming relief of partition and possession and such a suit is not maintainable. He would advert my attention to para Nos. 19 and 20 of the judgment of the Trial Court, in which it is clearly held that suit is liable to be dismissed and they are not entitled to claim share. Learned counsel would further submit that no relief of declaration can be granted in absence of relief for possession and especially when appellant is found to be in possession of the suit land. It is contended that appellant accrued title on the basis of Sammati Patra at Exhibit 65 executed on 29.04.2002 and, thereafter consent deed executed on 18.03.2005. He would further submit that in absence of any challenge to Sammati Patra at Exhibit 65 and consent letter at Exhibit 33, decree passed by both the Courts is unsustainable. It is further contended that Sammati patra at Exhibit 65 is being pressed into service for collateral purpose and, therefore, registration is not necessary and would not be an impediment. Having proved Sammati patra by leading evidence and by exhibition of document, it would be imperative for the Courts below to hold title of the appellant.

5. The respondent Nos. 1 to 4 had filed suit for declaration of their 1/4th share in the suit land and for injunction. Relief of possession has not been specifically prayed for. Neither in express term relief of partition has been prayed for. However, tenor is that they are claiming their share in the suit land, which

was received by their mother Rajabai by way of partition in R.C.S. No. 337 of 1981. Plaintiffs are the daughters of Rajabai and Daulat/defendant No. 2, whereas appellant, who is defendant No. 1 is second wife of Daulat. Once Rajabai received the property by way of partition vide decree passed by the competent Civil Court, it becomes absolute property as per Sec. 14 of the Hindu Succession Act (for the sake of brevity and convenience hereinafter referred as to the 'Act'). Plaintiffs and their father Daulat/defendant No. 2 is entitled to equal share as per Sec. 15(1)(a) of the Act.

6. The suit land which was not exclusive property of Daulat or for that purpose the plaintiffs could not have been alienated by any disposition. Plaintiffs and the respondent/Daulat are having equal share. In such situation, respondent Nos. 1 and 2 are alleged to have executed Sammati patra on 29.04.2002 in favour of the respondent No. 2/Daulat, their father. There is nothing on record to show that respondent Nos. 1 and 2 are exclusive owners of the property having sellable or transferable title. Sammati patrak has been executed and proved by leading evidence by the appellant. However, that itself would not be a conclusive proof of transfer of title.

7. In view of Sec. 17 of the Indian Registration Act, Sammati patrak is a compulsorily registrable document. In the absence of registration as well as in absence of payment of stamp duty, it would have no effect. For that purpose reference can be made to

Sec. 49 of the Registration Act. Though sammati patrak is exhibited at Exh. 65, it would not confer any title to the respondent No. 2/Daulat. Consequentially, Daulat could not have transferred the property to the appellant by consent deed dated 18.03.2005. Pertinently, said document is also unregistered and without payment of any stamp duty. It would not enure to the benefit of the appellant to confer any title or sellable interest.

8. Both the Courts below have declined the relief of injunction holding that appellant is in possession of the property. Though appellant is in possession of the property that does not mean that said possession is legal. For the reasons stated above appellant did not receive any title by any legally enforceable document. Under these circumstances, just because appellant is in possession, it cannot be said that decree declaring 1/4th share cannot be passed or executed.

9. The relief which was granted by the Trial Court giving 1/4th share in the half portion to the plaintiff and remaining portion to the respondent No. 5 though is not strictly in accordance with law, considering discussion of Sec. 14 and 15 of the Hindu Succession Act, that would not affect the appellant. Said decree passed by the Trial Court is confirmed by the lower appellate Court. Respondent Nos. 1 to 4 are satisfied with such a decree of declaration. It is their choice to claim the possession or to avail any other remedy as permissible in law. However, just

for the relief of partition has not been claimed in express terms that would not make their suit untenable. The appellant is defending the possession on the basis of title. Her claim is based on Sammati patrak Exhibit 65 and consent deed dated 18.03.2005. It cannot be said under these circumstances the suit is for collateral purpose.

10. For the reasons stated above, I do not find that any substantial question of law is involved in the matter, muchless as pressed into service by the present appellant. Second appeal is devoid of merit. Same is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

bsb/June 25