



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

APPEAL FROM ORDER NO. 48 OF 2021

Panjabrao S/o Narayanrao Naik,
Age : 70 Years, Occu. : Legal,
Retired R.B.I. Officer,
Native of Village Bhirda,
Tq. & Dist. Hingoli,
R/o 201-A, Shree Swami Samarth
CHS, Plot 99-100, Sector 1,
Sanpada, Navi Mumbai. .. Appellant

Versus

Pralhadrao S/o Narayanrao Naik,
Age : 62 Years, Occu. : Agriculture,
R/o Bhirda, Tq. & Dist. Hingoli. .. Respondent

Shri Panjabrao S/o Narayanrao Naik, Party in Person.
Shri Dhananjay M. Shinde, Advocate for the Respondent.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 09.10.2025
JUDGMENT PRONOUNCED ON : 17.10.2025.

JUDGMENT :-

. Heard both sides finally,

2. Appeal was admitted on following substantial questions of law vide order dated 20th February, 2024 :

[i] Whether it was open for the first appellate court to keep the first appeal pending and call for the findings on the proposed

additional issues framed by the first appellate court by exercising powers under Order XLI Rule 25 of the Code of Civil Procedure [‘CPC’]?

[ii] Whether in view of the provisions of Order XLI Rule 25 of CPC, the first appellate court was right in setting aside the entire decree passed by the trial court and remanding the matter back for fresh trial?

3. Appellant is questioning order dated 02.03.2020 remanding R.C.S. No. 122 of 2010 for framing additional issues and deciding the matter afresh.

4. Appellant is the original plaintiff and the respondent is his brother original defendant. Appellant had filed R.C.S. No. 122 of 2010 for partition and possession in respect of land gut No. 06 admeasuring 02H, which was part of Sy. No. 4/1. Its case of the appellant that on 24.11.1977 registered partition deed was executed amongst the parties and their father. Their father Narayanrao was allotted gut No. 06. In the year 1992 he transferred 2H land to his wife Geetabai. After death of their parents both brothers amicably divided the lands held by the parents. The respondent refused to hand over possession of the land allotted to the appellant, hence the suit was filed.

5. Respondent contested the suit on the ground that in partition of the year 1977, he was allotted inferior quality of land, hence in the year 1987 their father Narayanrao further

allotted land to the respondent – defendant. Hence transfer of 2H land in the year 1992 by Narayanrao to their mother Geetabai is misconceived. He claims to be the owner of land by way of gift executed by his mother Geetabai vide document dated 11.11.2009.

6. Trial Court framed four issues. After leading evidence, by reasoned judgment suit was partly decreed awarding half share to each of them in land gut No. 06. Being aggrieved by the decree, R.C.A. No. 12 of 2018 was preferred. By judgment and order dated 02.03.2020 Appellate Court remanded the matter holding that necessary issues were not framed and parties had no opportunity. For addressing those issues entire suit was remanded to the Trial Court.

7. Mr. Panjabrao Narayanrao Naik party in person submits that lower Appellate Court committed grave error of jurisdiction in remanding entire matter without appreciating the evidence on record. He submits that order of remand is unwarranted and the Appellate Court itself could have adjudicated the issues. It is submitted that its an error of jurisdiction to remand the suit for trying it afresh instead of exercising powers U/O XLI Rule 25 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the 'C.P.C.'). It is further contended that appellant's case is supported by registered partition deed and the respondent is estopped from challenging the same. It is vehemently submitted that after framing of the

issues, respondent did not make any grievance. The Trial Court elaborately considered all facts in issue and rendered judgment, which cannot be faulted on technical ground.

8. Per contra, learned counsel Mr. Shinde for the respondent submits that just because respondent did not pray for recasting of the issues would not disentitle him to agitate a vital aspect which is pleaded in the written statement and which escaped from the consideration of the Trial Court. It is submitted that whole case of the plaintiff is false because in the year 1987 he was allotted 2H of land. Therefore, again in the year 1992 father could not have transferred anything to their mother. It is submitted that the respondent raised specific ground regarding not framing of the issues which is rightly appreciated in the impugned order.

9. I have considered rival submissions of the parties. Following issues were cast by the Trial Court.

1. Whether the plaintiff proves that suit land is ancestral Hindu Joint Family property of himself and the defendant ?
2. Is plaintiff entitled for partition and separate possession of his half share in suit land ?
3. Whether the defendant is entitled for compensatory costs as claimed by him in view of Section 35-A of the Civil Procedure Code ?
4. What order and decree ?

10. Appellant examined himself. The respondent examined himself and one more witness. Registered partition deed dated 24.11.1977 is proved and marked as Exhibit 27. The gift deed dated 11.11.2009 pressed into service by the respondent is unregistered document and it was marked as Article – A. The mutation entry Nos. 18, 392 and 658 are taken into consideration.

11. It reveals from the judgment passed by the Trial Court that the respondent contested the suit on specific grounds that their father Narayanrao was allotted gut No. 06 in a partition effected on 24.11.1977. The transfer of 2H by their father to mother is impossible because already on 20.02.1987 he was allotted 2H of land, because in earlier partition he was given less land and that too of inferior quality. It is further considered that Geetabai executed gift deed on 11.11.2009.

12. Though specific issues regarding the defence raised by the respondent were not framed, no objection was ever raised by the respondent after framing of the issues. He could have resorted to recasting or framing of additional issues. He was satisfied with the issues framed.

13. The Trial Court considered all facts in issue involved in the matter. The defence raised by the respondent has been elaborately dealt with, notwithstanding the issues were not

framed. The respondent was given every opportunity of hearing. The Trial Court assigned reasons for not accepting unregistered partition deed dated 20.02.1987. It has taken into account the revenue record. Respondent's plea of execution of gift deed has also been dealt with. The facts in issue involved in the case have been dealt with by the Trial Court by assigning reasons. Therefore, I do not find that for not framing of couple of issues any vital aspect of the matter is lost sight of by the Trial Court.

14. I have considered the reasons assigned by the Appellate Court in para Nos. 18 and 19. It is not made clear as to what injustice is caused to the respondent for not framing the issues or improperly framing of the issues. I find that lower Appellate Court has committed apparent error of jurisdiction in relegating the matter to the Trial Court for trying it afresh.

15. Both the parties advanced arguments on the merits of the matter. The lower Appellate Court did not take into consideration the merits of the case, rather it found fault with framing of the issues. Its nobody's case that more evidence is available, which was not brought on record because of the improper framing of the issues. The Appellate Judge was seized with adequate material, then instead of remanding the matter he could have himself decided factual aspect. I find that remand is unwarranted.

16. Another option available with the lower Appellate Court is

to invoke powers under Order XLI Rule 25 of the C. P. C. Instead of quashing the judgment passed by the Trial Court entirely and relegating the matter for trying afresh only additional issues which were not earlier framed could have been referred to the Trial Court for recording findings. But that is also not resorted too. I find that impugned order is totally unsustainable.

17. It would be open for the lower Appellate Court to call upon the parties to address the points for determination which are formulated in the impugned order. Lower Appellate Court committed error of jurisdiction. The order of remand refers to Order XLI Rule 25 of the C. P. C. also, is unsustainable. Accordingly I answer the substantial questions of law and pass following order.

ORDER

- A. Appeal from order is allowed.
- B. Impugned judgment and order dated 02.03.2020 passed by the Adhoc District Judge – 2, Hingoli in R.C.A. No. 12 of 2018 is quashed and set aside and R.C.A. No. 12 of 2018 is restored to its original position to Adhoc District Judge – 2, Hingoli for deciding it on merits on the basis of material available on record.
- C. Parties shall appear before the Adhoc District Judge – 2, Hingoli on 03.11.2025.

D. Record and proceedings be sent back to the concern Court immediately.

[SHAILESH P. BRAHME J.]

bsb/Oct. 25