



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

18 SECOND APPEAL NO. 178 OF 2022

1. Radhakishan Rambhau Chakkar
Age : 66 Years, Occu. Agril,
2. Shrimant Rambhau Chakkar
Age : 56 Years, Occu. Agril,
3. Datta Radhakishan Chakkar,
Age : 41 Years, Occu. Agril,
All R/o. : Kolher Tq. Georai
Dist. Beed
4. Subhadrabai Rama Khaire,
Age : 49 Years, Occu. Agril,
R/o. Gundewadi, Tq. Ambad,
Dist. Jalna

...Appellants

VERSUS

1. Nilabai Shivaji Chakkar
Age : 56 Years, Occu. Household and Agril,
R/o. Kolher, Tq. Georai,
Dist. Beed
2. Ramesh Shivaji Chakkar (Deleted)
3. Nandabai Shivaji Chakkar,
Age : 33 Years, Occu. Household,
4. Vandana Shivaji Chakkar,
Age : 31 Years, Occu. Household and Agril,
Respondent Nos. 3 and 4
R/o. Kolher, Tq. Georai,
Dist. Beed.
5. Anuja Ramkrushna Pandav,
Age : 54 Years, Occu. Household and Agril,
R/o. Shikshak Colony, Georai,
Dist. Beed.

6. Kailas Eknath Pawar
Age : 38 Years, Occu. Agril,
7. Arjun Eknath Pawar,
Age : 40 Years, Occu. Agril,
8. Murlidhar Chimaji Malatkar,
Age : 44 Years, Occu. Agril,
9. Parvatibai Murlidhar Malatkar,
Age : 39 Years, Occu. Agril,
Respondent Nos. 6 to 9
R/o. Kolher Tq. Georai,
Dist. Beed.

...Respondents

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Kakde Yuvraj V, Advocate for Appellant
Mahesh R. Bhosale, Advocate for Respondent Nos.1,3 and 4
Mr. Yuvraj S. Choudhari Advocate for Respondent Nos.5, 6, 7
Mr. Shivraj B. Kadu h/f. Mr. Umesh Mote, Advocate for Respondent
Nos.8 & 9

**WITH
CIVIL APPLICATION NO. 5027 OF 2022
IN SA/178/2022**

CORAM : ROHIT W. JOSHI, J.

DATE : 10th MARCH, 2025

ORAL JUDGMENT.:

1. The present appeal is preferred by original defendant Nos.3 to 5 and 10 challenging decree for partition and separate possession passed against them in First Appeal.

2. Respondent Nos.1 to 4 are original plaintiffs who had filed suit for partition and separate possessions being Regular Civil Suit No.235

of 1997. The dispute pertains to partition of properties of family of one Rambhau Umanji Chakkar/original defendant No.1. His wife, Sonabai is defendant No.2, defendant Nos. 3 & 4 are his sons, namely, Radhakisan, Shrimant, defendant No.5 i.e. Datta is grandson and Defendant No.10 Subhadrabai is daughter. Defendant Nos.6 to 9 are purchasers of some of the suit properties. Defendant Nos.6 and 7 have purchased suit properties bearing Gut Nos.262/1, 262/2 and 263. Likewise, defendant Nos.8 and 9 have purchased suit properties bearing Gut Nos.80 and 83. Plaintiff Nos.1 to 4 are widow, son and daughters respectively of late Shivaji s/o. Rambhau Chakkar. They had filed the suit seeking partition and separate possession of several properties which form subject matter of the suit. The learned Trial Court decreed the suit in part vide judgment and decree dated 19.12.2014. The learned Trial Court granted a decree for partition and separate possession with respect to 1/4th share to the plaintiffs with respect to suit properties bearing block Nos.75, 188, 193, 194, 262/1, 262/2 and 263 as also house properties bearing Nos.141 and 5. So far as suit property bearing Gut Nos.27, 192, 80 and 83 are concerned, the suit came to be dismissed holding that these were self acquired properties of defendant Nos.3 and 5.

3. It will be pertinent to mention here that Gut Nos.80 and 83

appear to be wrongly included as suit properties, since the family or any member thereof had no concern with the said properties. This fact is admitted by all the learned Counsel appearing in the matter. The dispute remains with respect to land bearing Gut Nos.27 and 192.

4. The original defendant Nos.3 to 5 and 10 filed appeal under Section 96 of the CPC being Regular Civil Appeal No.48 of 2016. The original plaintiffs had also filed a cross-objection with respect to land bearing Gut Nos.27, 192, 80 and 83. The learned First Appellate Court has vide judgement and decree dated 16.06.2020 dismissed the appeal preferred by the defendant Nos.3 to 5 and 10 and has allowed the cross-objection filed by the plaintiffs with respect to two properties bearing Gut Nos.27 and 192. The cross-objection came to be dismissed with respect to property bearing block Nos.80 and 83. Defendant Nos.3 to 5 and 10 have therefore preferred the present Second Appeal challenging the decree passed by the First Appellate Court allowing the cross objection filed by the original plaintiffs whereby decree for partition and separate possession is passed with respect to land bearing Gut Nos.27 and 192.

5. Mr. Yuvraj Kakade, the learned Counsel appearing for the appellant has vehemently argued that the learned First Appellate Court has committed a manifest error in allowing the cross objection with

respect to the aforesaid two gut numbers. His contention is that the said properties were self-acquired properties of defendant Nos.3 and 5. He contends that the plaintiffs had failed to prove that the family had sufficient nucleus in order to purchase the said properties which are admittedly purchased in the names of defendant Nos.3 and 5. He contends that although there may be a presumption with respect to jointness of a hindu family, there is no presumption that a joint hindu family will possess joint hindu family properties. He argues that presumption with respect to jointness of properties will arise only when there is sufficient proof as regards existence of joint nucleus. He has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *D. S. Lakshmaiah and Anr. Vs. L. Balasubramanyam & Anr.* reported in AIR 2003 Supreme Court 3800.

6. Per contra learned Counsel Mr. Mahesh Bhosale appearing for respondent Nos.1,3 and 4 opposes the submissions contending that the family admittedly had vast stretches of agricultural lands which were yielding income. The income from these lands was the only source of income of the family. He points out from the findings as also from pleadings and evidence that defendant Nos.3 and 5 who claim that the two gut numbers were their self acquired property did not have any independent source of income. He, therefore contends that since

nucleus in the family is proved and respondent Nos.3 and 5 have failed to prove separate source of income, the only inference that can be drawn is that although the said gut numbers were purchased in the names of respondent Nos.3 and 5 they were in fact properties of the joint hindu family. He justifies the findings recorded by the learned First Appellate Court in view of the aforesaid submissions made by him.

7. The learned Counsel for the appellant also points out that although six points have been framed by the learned First Appellate Court, point numbers 2 and 3 have not been answered. I have perused the judgement. Findings with respect to point numbers 2 and 3 are recorded by the learned First Appellate Court. It is just due to inadvertence that the relevant paragraphs have not been titled as findings on those points for consideration.

8. Having heard the rival submissions as aforesaid and also on perusal of documents and judgments delivered by the learned Courts, I am of the opinion that the learned Trial Court has not appreciated the controversy with respect to properties bearing Gut Nos.27 and 192 in a proper perspective. The learned Trial Court ought to have appreciated that the family of the plaintiff and defendant Nos.1 to 5 and 10 had vast stretches of agricultural lands and these lands were yielding

income. There is sufficient material on record to infer that the family had sufficient nucleus for procurement of the two disputed properties. As against this, it is not the case of defendant Nos.3 and 5 that they had any independent source of income. Their case is that they had received gold jewellery from their in-laws which was sold for procurement of these properties. Perusal of the pleadings in the written statement will demonstrate that particulars in this regard are pertinently missing. The evidence also does not provide any details as regards the value of the alleged ornaments, the person to whom it is sold, the period when it was sold. The learned Trial Court has erred in placing reliance on evidence which was completely lacking in material particulars.

9. I have perused the findings recorded by the learned First Appellate Court. The learned First Appellate Court has recorded cogent reasons for disbelieving the evidence of the defendant Nos.3 and 5 in this regard. The learned First Appellate Court has also considered the tentative value of the gold ornaments allegedly sold by the defendant Nos.3 and 5 in order to augment fund to purchase the aforesaid two properties in their names. The learned First Appellate Court has rightly held that even if the version of defendant Nos.3 and 5 is believed, the sale proceeds will be insufficient for purchasing the said two properties.

10. A positive finding is recorded by the learned First Appellate Court that the family had large stretches of agricultural lands which were yielding income. In view of the positive finding recorded by the learned First Appellate Court, i.e., family did possess sufficient nucleus and defendant Nos.3 and 5 have failed to prove any independent source of income as also their theory of augmenting funds from sell of jewellery of their respective wives, I am of the opinion that the issue agitated by the appellant in the present second appeal is based on a question of fact. Since I do not find any perversity in the findings, the issue agitated will not give rise to a substantial question of law. In that view of the matter, I am not inclined to show any indulgence in exercise of jurisdiction under Section 100 of the Civil Procedure Code. The Second Appeal does not give rise to any substantial question of law and is accordingly dismissed.

11. In view of the dismissal of the Second Appeal, Civil Application No.5027 of 2022 stands disposed of.

[ROHIT W. JOSHI J.]