



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 SECOND APPEAL NO. 190 OF 2025
WITH
CIVIL APPLICATION NO. 5674 OF 2025
IN SA/190/2025
PANDHARINATH SAHEBRAO MULE
VERSUS
GITABAI GANGADHAR PAWSE

...
Advocate for Appellant : Mr. Shinde Baliram Bhausahab
Advocate for Respondent : Ms. Sundale Rakhi Virbhadra
...

CORAM : SHAILESH P. BRAHME, J.

DATE : 10.09.2025

PER COURT :

Heard both sides.

2. Present second appeal is emanating from concurrent findings of facts in granting decree for partition, possession, awarding half share to each in land Gat Nos. 50, 51, 218.

3. The respondent-plaintiff had filed a suit against her brother appellant and her mother Parvatibai for partition and possession. The suit properties are ancestral properties. It is contended that though land Gat No. 218 was purchased in the name of present appellant, it was a joint family property and there was no independent source of income to him. When she claimed partition, she was denied share, which resulted in filing of Regular Civil Suit No. 10/2017.

4. The appellant contested the suit on the ground that Gat No. 218 is acquired by him by his hard earned money. He had source of income from the remuneration of services with D.W. 3 Bhagwan Khandekar. It is further contended that the respondent-plaintiff relinquished her right by accepting

Rs. 1,32,000/-required for purchasing land Gat No. 251 admeasuring 5 Acres and 14 Ares, which was given by the appellant. It is further contended that she is not entitled to any relief.

5. Parties have led oral evidence. The plaintiff examined himself. The defendants examined four witnesses namely DW 2 Parvati, DW 3 Bhagwan and DW 4 Murlidhar.

6. The suit was partly decreed by the Trial Court by awarding 1/3rd share each. The theory of the appellant that Gat No. 218 was self-acquired property was discarded. Being aggrieved, the appellant preferred Regular Civil Appeal No. 4/2024. The lower Appellate Court vide judgment dated 23.01.2025 substantially confirmed the decree with a modification that the parties are held to be entitled to half share each.

7. The learned counsel for the appellant submits that both the Courts below committed error of jurisdiction in appreciating the evidence on record. It is contended that a voluminous evidence is placed on record to indicate that Gat No. 218 is self-acquired property. The depositions of witnesses D.W. 2 to 4 have not been correctly appreciated. It is further contended that the respondent was paid Rs. 1,32,000/- for purchasing land Gat No. 251 and despite that the suit is filed, which is untenable.

8. Per contra, learned counsel appearing for the respondent supports the impugned judgment and decree. She would submit that both the Courts below have recorded concurrent findings of fact after appreciating the evidence on record. It is further contended that there is no perversity or patent illegality in the findings recorded by the Courts below. It is further submitted that there was sufficient nucleus from the ancestral lands to purchase land Gat No. 218. Neither the independent source of income of the appellant is established nor is there any record to show that there was relinquishment by the respondent.

9. I have considered the rival submissions of the parties. The controversy pertains to Gat No. 218. Both the parties have rival claim for Gat No. 218. Before purchasing Gat No. 218, the joint family had Gat No. 50 admeasuring 54-Are and Gat No. 51, admeasuring 52-Are with them. To corroborate the theory that it is a self-acquired property, the appellant adduced evidence of DW 2 Parvati, his mother, D.W. 3 Bhgwan and D.W. 4 Murlidhar-maternal uncle. Both the Courts below have considered the depositions of the witnesses and have arrived at concurrent findings of facts against appellants.

10. For discarding the plea that Gat No. 218 is self-acquired property, following concurrent findings of facts are recorded:

(a) No material on record that appellant was getting remuneration by his employment with DW 3 Bhagwan Khandekar, and it was having potential to purchase the land measuring 1 H 30-Are.

(b) No material on record that appellant was in employment of DW 3 Bhagwan Khandekar. There was no written document indicating any contract between them or payment of remuneration.

(c) No tangible evidence to show that Rs. 9600/- was paid towards arrears of four years.

(d) The cross-examination of D.W. 2 shows that appellant's children were brought up by her meaning thereby that the appellant was not in a position to look after the children.

11. I do not find any perversity or patent illegality in the findings recorded by both Courts below. The appellant is unable to prove that Gat No. 218 is his self-acquired property.

12. The respondent purchased land Gat No. 251 on 06.07.1997 due to financial help of appellant and in lieu of that she relinquished her share. However, there is no material on record to indicate that the appellant ever extended financial help to his sister. The theory of relinquishment is oral in nature. Relinquishment of right in the property needs registration under Section 17(1)(b) of the Registration Act, 1908, which is rightly noted by the Lower Appellate Court. In the absence of any registered document or any material indicating the relinquishment, both the Courts below are justified in discarding the theory.

13. Considering over all circumstances, and the evidence on record, I find that no interference is called for. No substantial question of law is involved in the second appeal.

14. The Second Appeal is dismissed.

(SHAILESH P. BRAHME, J.)

mkd/-