



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

SECOND APPEAL NO. 310 OF 2025

Sampatrao Gulabrao Zanjad .. Appellant

Versus

Chandrakant Gulabrao Zanjad
and others .. Respondents

Shri Dhananjay A. Mane, Advocate h/f Shri Pankaj A. Bharat,
Advocate for the Appellant.

Shri Mahesh V. Ghatge, Advocate for the Respondent No. 1.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 09TH SEPTEMBER, 2025.**

FINAL ORDER :

. Heard both sides.

2. The present second appeal is directed against the judgment and decree dated 15.04.2024 passed by the learned District Judge - 02, Ahmednagar in R.C.A. No. 88 of 2023, thereby granting declaration in favour of the plaintiff and injunction against the defendants from obstructing peaceful possession of the plaintiff. Appellant is original defendant No. 1. The respondent No. 1 is his real brother, plaintiff. The respondent Nos. 2 and 3 are his real brothers. The parties are referred by their original status in the suit.

3. Respondent No. 1 – plaintiff had filed suit for declaration,

injunction and in alternative for partition in respect of gut No. 402/1, 402/2/3, 673, 680 and 658/2. The plaintiff and defendant Nos. 1 to 3 are real brothers. The suit properties were joint Hindu family properties. There was oral partition amongst them. A registered partition deed was executed on 22.07.2015, which is at Exhibit 34. Thereafter, correction deed was executed on 20.01.2017 at Exhibit 35, which was also registered. In pursuance of the oral and written partition, plaintiff is in possession of eastern side portion to the extent of 1H and 38R of gut No. 402/1 and eastern side portion of 2H and 62R of gut No. 402/2/3.

4. The defendants tried to alienate his share and the suit was required to be filed. The defendants did not appear in the suit. It proceeded *ex-parte* against them. They did not participate in the proceedings. The plaintiff adduced his oral evidence. He placed on record the 7/12 extracts of the suit lands, mutation entries, partition deeds at Exhibit Nos. 34 and 35, etc. After assessing the material on record, trial court dismissed the suit vide judgment and decree dated 12.04.2023 holding that partition deeds at Exhibit Nos. 34 and 35 are silent regarding the dimension of the share allotted to the plaintiff and those were unidentifiable.

5. Being aggrieved by decree passed by the trial Court, plaintiff preferred R.C.A. No. 88 of 2023. Lower appellate Court allowed the appeal partly reversing the judgment and decree

passed by the Trial Court. By the impugned judgment dated 15.04.2024, it was declared that the plaintiff is lawful owner and in possession of 1H 38R towards eastern side of gut No. 402/1 and 2H 62R towards eastern side of gut No. 402/2/3 being allotted in the partition amongst the parties. The decree of perpetual injunction is also passed in his favour.

6. Learned counsel Mr. Mane appearing for the appellant vehemently submitted that partition deeds at Exhibit Nos. 34 and 35 are vague and lacking material particulars like boundaries. The so called share allotted to the plaintiff is not identifiable. It is submitted that lower appellate Court committed error of jurisdiction in relying upon the partition deeds because they were registered. It is submitted that alternatively decree of partition should have been passed. It is urged that it's a fit case to remand the matter to the trial court.

7. Per contra, Mr. Mahesh Ghatge, learned counsel appearing for the respondent No. 1 supports impugned judgment and order. He would submit that in the absence of any written statement, oral evidence and contest on the part of the appellant, it is not permissible to interfere with the finding recorded by the lower appellate Court. My attention is adverted to the evidence of plaintiff – Chandrakant and averments of para No. 4 of civil application filed by the appellant in this Court. It is submitted that in view of proviso to Sec. 92 of the Evidence Act, the plaintiff has made out a case of share allotted to him and his entitlement.

It is further submitted that other brothers are not disputing the partition by metes and bounds, except the appellant.

8. Having considered rival submissions of the parties what I find that the biggest hurdle in the way of the appellant is that all the defendants including the appellant did not appear before the trial court. No written statement was filed by them. Nor did they participate in the proceedings. The evidence adduced by the plaintiff went unchallenged. There are inherent limitations for the appellant to challenge the judgment passed by the lower appellate Court. Appellant or other defendants did not challenge order proceeding *ex-parte* against them in the trial court. In that view of the matter, only inference which can be drawn is that appellant consciously chose to remain absent before the Trial Court and he is estopped from challenging the theory put up by the plaintiff regarding oral partition and recitals of Exhibit Nos. 34 and 35.

9. The judgments passed by both the Courts below disclose that case put up by the plaintiff is not accepted as gospel truth. Both the Courts below were conscious to examine the oral and documentary evidence adduced by the plaintiff though there was no challenge to it. Plaintiff examined himself. The revenue record and recitals of registered partition deed Exhibit Nos. 34 and 35 are taken into account. The lower appellate Court is justified in reversing the decree passed by the Trial Court.

10. It reveals from record that properties mentioned in column No. 1A and 1B of the plaint are the ancestral properties. It is the case of the plaintiff that there was oral partition amongst the members of the family allotting eastern side 1H 38R of gut No. 402/1 and eastern side 2H 62R of gut No. 402/2/3 to the plaintiff. During the oral partition, the demarcation and the boundaries of the share of members of the joint family were fixed. That was followed by extent of partition deed dated 22.07.2015 at Exhibit 34. A correction deed was executed on 20.01.2017 at Exhibit 35. Both the documents are registered. In the absence of any challenge to the theory of oral partition, demarcation, fixation of the boundaries and the shares followed by Exhibit Nos. 34 and 35, it is not permissible to doubt the entitlement of the plaintiff for the relief of declaration.

11. Learned counsel Mr. Mahesh Ghadge is right in contending that it is the appellant who is objecting the oral and written partition deeds filed on record. The defendants did not contest the suit. Appeal is preferred by the defendant No. 1 only. It means that whatever decided amongst the brothers regarding identification and allocation of the share is agreeable and the appellant is unnecessarily raising the dispute.

12. I have gone through the Sec. 92 of the Evidence Act. Mr. Ghadge, learned advocate is right in relying on Proviso (2) of Sec. 92 of the Evidence Act. The oral agreement between the parties regarding allotment of shares is admissible in law.

13. I do not find that there is any perversity or illegality in the findings recorded by the lower Appellate Court. No substantial question of law exists in the second appeal. Second appeal is dismissed.

[SHAILESH P. BRAHME J.]

bsb/Sept. 25