



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.588 OF 2015
WITH
CIVIL APPLICATION NO.14237 OF 2015
WITH
CIVIL APPLICATION NO.10767 OF 2021**

1. Bhagwandas S/o Jinabhai Patel,
(The deceased through his legal
Heirs and legal representatives)
- 1-A. Mr. Bhupesh S/o Bhagwandas Patel,
Age: 54 years, Occ: Business,
R/o 602, Kiran Pawar, 45 Palihill,
Opp-Cozy Home, Bandra (West)
Mumbai-400 050.
- 1-B. Ms. Falguni Bhagwandas Patel,
Age: 46 years, Occ: Business,
R/o 602, Kiran Pawar, 45 Palihill,
Opp-Cozy Home, Bandra (West)
Mumbai-400 050.
- 1-C. Mrs. Kiran Vikas Hindocha,
Age: 48 years, Occ: Business,
R/o F-711, Karan Building,
Off yari Road, Versova, Andheri (West)
Mumbai-400 050.
2. Atul Mangalal Patel,
Age: 55 years, Occ: Business
3. Rahul S/o Bhaulal Patel,
Age: 53 years, Occ: Business
4. Sharadaben Bhagwandas Patel
(The deceased through his legal
Heirs and legal representatives)
- 4-A. Mr. Bhupesh S/o Bhagwandas Patel,
Age: 54 years, Occ: Business,
R/o 602, Kiran Pawar, 45 Palihill,
Opp-Cozy Home, Bandra (West)
Mumbai-400 050.

- 4-B. Ms. Falguni Bhagwandas Patel,
Age: 46 years, Occ: Business,
R/o 602, Kiran Pawar, 45 Palihill,
Opp-Cozy Home, Bandra (West)
Mumbai-400 050.
- 4-C. Mrs. Kiran Vikas Hindocha,
Age: 48 years, Occ: Business,
R/o F-711, Karan Building,
Off yari Road, Versova, Andheri (West)
Mumbai-400 050.
5. Sau. Jaishree Surendra Patel,
Age: 47 years, Occ: Business
- All R/o 3, Oriental Building,
First Floor, 62, M.G. Road,
Fort, Mumbai-1.

..Appellants
(Orig. Deft. Nos.5 to 9)

Versus

1. Sau. Malti Ramesh Patil,
Age: 52 years, Occ: Agri.,
R/o. Vitthal Peth, jalgaon,
Tq. & Dist. Jalgaon.
2. Sau. Chandrabai Vasant Patil,
Age: 53 years, Occ: Agri.,
R/o Nashirabad, Tq. & Dist. Jalgaon.
3. Chandrakant Vasant Patil,
Age: 40 years, Occ: Agri.,
R/o Nashirabad, Tq. & Dist. Jalgaon.
4. Kishor Vasant Patil,
Age: 38 years, Occ: Agri.,
R/o Nashirabad, Tq. & Dist. Jalgaon.
5. Sau. Mangal Vasant Narkhede,
Age: 33 years, Occ: Agri.,
R/o Salve, Tq. Dharangaon District Jalgaon.
6. Suresh Damu Patil,
Age: 61 years, Occ: Agri.,
R/o Nashirabad, Tq. & Dist. Jalgaon.

7. Ramesh Damu Patil,
Age: 56 years, Occ: Agri.,
R/o Nashirabad, Tq. & Dist. Jalgaon.
 8. Ashok Damu Patil,
Age: 47 years, Occ: Agri.,
R/o Nashirabad, Tq. & Dist. Jalgaon.
 9. Chudaman Damu Patil,
Age: 45 years, Occ: Agri.,
R/o Nashirabad, Tq. & Dist. Jalgaon.
 10. Sau. Sushilabai Prabhakar Bhoi,
Age: 41 years, Occ: Agri.,
R/o Asoda, Tq. & Dist. Jalgaon. ..Respondents
(R.No.1-Orig. Plaintiff & R. Nos.2 to
10-Orig. Deft. Nos.1 to 4 & 10 to 14.)
...
- Mr. R. N. Dhorde, Senior Advocate i/by Mr. V. R. Dhorde a/w Mr. Sanjay S. Dudhane, Advocate for Appellants.
Mrs. A. N. Ansari, Advocate for Respondent No.1.
Mr. S. B. Yawalkar, Advocate for Respondent Nos.2 to 4 and 6 to 9.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th APRIL, 2025.

ORDER:-

1. The appellants/original defendant nos.5 to 9 impugn judgment and decree dated 23.02.2015 passed by Principal District Judge, Jalgaon in Regular Civil Appeal No.91/2008, thereby upholding judgment and decree dated 22.02.2008 passed by Joint Civil Judge, Senior Division, Jalgaon in Special Civil Suit No.74/2004. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).
2. The facts giving rise to present Second Appeal can be summarized as under:

One Damu Kushal Patil was owner of land Gut No.421/1 admeasuring 4H 95R situated at village Manyarkheda, Tq. and Dist. Jalgaon. He died in the year 1978 leaving behind his sons namely Vasant, Suresh, Ramesh, Ashok and Chudaman and two daughters namely Malti and Sushilabai. In the year 1995 Vasant and his brothers executed registered sale deed. Vasant represented himself as Power of Attorney holder of Sau. Malti Patil. Accordingly defendant nos.5 to 9, i.e. Bhagwandas Patel and others acquired ownership and title of the suit property. Later on, in the year 2007, Malti Patil instituted Regular Civil Suit, which was later on re-numbered as Special Civil Suit No.74/2007 seeking decree of partition and separate possession of her 1/7th share contending that she being one of the legal representative of Damu Kushal Patil/original land owner, entitled for 1/7th share in suit property. However, her brother Vasant Patil falsely represented himself as her Power of Attorney holder and transferred land to defendant nos.5 to 9 under registered sale deed dated 07.06.1996. She contends that her signature was obtained under pretext of recording mutation entry by her brother, which has been utilized for creating false document of Power of Attorney.

3. The suit was contested only by defendant nos.5 to 9 (purchaser) by filing written statement contending that sale deed is

valid and defendant no.1-Vasant was Power of Attorney holder of plaintiff. Therefore sale deed is binding upon her.

4. The Trial Court framed issues, recorded evidence of parties and concluded that defendants failed to prove execution of Power of Attorney by plaintiff in favour of Vasant Patil. Consequently, sale deed would not bind on her right over suit property. In Appeal filed by defendant nos.5 to 9 before District Judge, finding recorded by Trial Court is confirmed. Ultimately, plaintiff is held entitled for 1/7th share in suit property by declaring that sale deed dated 07.06.1996 is not binding on plaintiff's right.

5. Mr. Dhorde, learned Senior Advocate appearing for appellants submits that plaintiff has pleaded that her signature was obtained on some paper by Vasant Patil and same has been used to represent himself as Power of Attorney holder of plaintiff. According to Mr. Dhorde once she accepted signature, it was for her to prove that it was obtained by fraud or she has not executed Power of Attorney. According to Mr. Dhorde, Trial Court as well as Appellate Court failed to frame appropriate issues and points for consideration and wrongly ventured into irrelevant aspects of matter while passing decree in favour of respondent no.1/original plaintiff.

6. Per contra, Mrs. Ansari, learned Advocate appearing for respondent no.1 supports judgment and decree as passed by Courts below.

7. The plaintiff has specifically asserted that she never executed Power of Attorney in favour of her brother Vasant Patil and, therefore, sell transaction would not bind on her right. The defendant nos.5 to 9 contested claim of plaintiff. The defendant no.6 in his deposition on behalf of all defendants admitted that Vasant and other four were owners of land. At the time of execution of sale deed, all were not present. Two ladies represented by Vasant as Power of Attorney were not present at the time of sale deed. He could not produce original sale deed and Power of Attorney in Court, although he claims to have possessed the same. Only photocopy of sale deed is placed on record. Both the Courts upon appreciation of evidence observed that so called original Power of Attorney is not placed on record. The plaintiff has specifically pleaded that she never executed Power of Attorney in favour of Vasant. Admittedly, plaintiff was not confronted with Power of Attorney. Nothing is brought on record to show that plaintiff was directly or indirectly party to the transaction or she had knowledge of execution of sale deed by Vasant in capacity of her Power of Attorney holder. In result, both Courts held that sale

deed would not bind upon plaintiff's right and approved her claim for 1/7th share in suit property.

8. In view of aforesaid concurrent findings of facts, no substantial question of law arises for consideration in this Second Appeal. Hence, Second Appeal stands dismissed.

9. In view of dismissal of Second Appeal, pending Civil Applications also stand disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025