

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 SECOND APPEAL NO.78 OF 2025

Manmath Laxman Gathude

VERSUS

Laxman Chanbas Gathude

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Advocate for Appellant : Mr. S.B. Madde

CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 26, 2025

FINAL ORDER :-

1. The appellant/original plaintiff impugns the judgment and decree dated 16.1.2024 passed by the District Judge, Ahmedpur in R.C.A. No.15 of 2021 thereby upholding judgment and decree dated 4.12.2021 in R.C.S. No.13 of 2019 passed by the Civil Judge J.D. Ahmedpur, District Latur.

2. Plaintiff filed a suit seeking partition and separate possession of land bearing gat no.170 admeasuring 26R situated at Savargaon claiming that it is a joint family property of plaintiff and defendant nos.1 to 3. He contends that defendant nos.1 to 3, without effecting actual partition of the suit property, alienated the same to defendant no.4 under sale deed dated 27.4.2017. According to him sale-deed is nominal and illegal.

3. Defendant refuted plaintiff's claim contending that there was previous partition of the joint family property. It has been compromised by the decree in R.C.S. No.4 of 2005. Defendant no.1 was absolute owner of the suit property in terms of that decree and, therefore, he was entitled to alienate the same. Trial Court framed issues, recorded evidence of the parties. Plaintiff stepped into the witness box and relied upon oral evidence of his witnesses.

4. Pertinently, he admitted that in previous partition suit, he got agriculture land from gat no.200 admeasuring 77R and 40R. Plaintiff's witness have admitted that plaintiff has already sold 40R land to one Thakubai. Further more, plaintiff also admitted that pursuant to the decree in RCS No. 04/2005, defendant No.1 became the owner of suit property. In that view of the matter, Courts have concurrently held that suit property was not joint family property as claimed by the plaintiff and alienation made by the defendant is legal and proper. Although, Mr. Madde, learned counsel appearing for the appellant submits that there was partial partition and there was no partition as regards to this property it was kept as joint, he could not point out any material to show that suit property

was kept in the name of defendant no.1 as joint family property. In fact, decree passed in R.C.S. No.4 of 2005 clearly depicts that suit property was also subject matter of partition and that was exclusively allotted to the share of defendant no.1. In that view of the matter, no substantial questions of law arises in this second appeal. Second appeal **sans merit**, hence **dismissed**.

(S. G. CHAPALGAONKAR, J.)

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