



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.461 OF 2023
WITH
CIVIL APPLICATION NO.12069 OF 2022**

1. Urmilabai Gulabrao Patil,
Age: 68 years, Occu: Retired
2. Megha Gulabrao Patil,
Age: 51 years, Occu: Service,
3. Ashwini Rahul solunkhe,
Age: 48 years, Occu: Service
4. Rahul Gulabrao Patil
Age: 44 years, Occu: Retired,

All R/o. Budhgaon,
Tq. Chopda, Dist. Jalgaon

..Appellants
(Orig. Defts.)

Versus

1. Smt. Alkabai Subhash Patil,
Age: 53 years, Occu: Agri.,
2. Nutan Subhash Patil,
Age: 33 years, Occu: Household
3. Anita Subhash Patil,
Age: 34 years, Occu: Household
4. Sunita Subhash Patil,
Age: 53 years, Occu: Household
5. Manish Subhas Patil,
Age: 30 years, Occu: Education

All R/o Budhgaon,
Tq. Chopda, Dist. Jalgaon

..Respondents
(Orig. Plaintiffs)

...

Mr. G. V. Wani, Advocate for Appellants.
Mr. M. R. Sonawane, Advocate for Respondents.

...
**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 24th FEBRUARY, 2025.**

ORDER:-

1. The appellants/original defendants impugn judgment and decree dated 08.02.2022 passed by District Judge-2, Amalner in Regular Civil Appeal No.49/2016, thereby upholding judgment and decree dated 16.08.2016 passed by Civil Judge Junior Division, Chopda in Regular Civil Suit No.08/2024. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondents/plaintiffs instituted Regular Civil Suit No.08/2024 seeking relief of partition and separate possession of agriculture land, more particularly, described in plaint, which consists of agriculture land Gut No.405 and plot with Grampanchayat House No.137 situated at Mauje Budhgaon. According to plaintiffs, those are ancestral and joint family properties and plaintiffs have one and half share in them. The plaintiffs contend that Late Jagatrao Kautik Patil was common ancestor. During his lifetime, he mutated land Survey No.69/1A in the name of defendant no.1-Gulabrao Patil as family arrangement. He was minor at that time. After death of Jagatrao, wife Mathurabai and Gulabrao exchanged land Survey No.69/A with Bhivsan Dagadu Patil and received land Survey No.150/1 i.e. Gut No.405, which is suit property. According to plaintiffs, on 15.06.2003 they asked for partition of their share from defendants, but they refused.

3. The defendants filed written statement. Initially, they admitted joint status of the suit properties, but withdrawn such admission by amendment in the written statement and put up case that suit plot is self-acquired property of defendant no.1-Gulabrao, who constructed house by obtaining loan. The defendants put up case that defendant no.1-Gulabrao repaid loan of joint family by selling gold ornaments of his wife. Therefore, agriculture land is given to his wife in lieu of her gold ornaments. They also pleaded that agriculture land was also self-acquired property.

4. The Trial Court after considering evidence and submissions, decreed the suit holding that land Gut No.405 and house are ancestral properties and held that plaintiffs have 1/4th share each out of half share of Subhash Jagatrao Patil. However, Trial Court accepted the case of the defendants that suit plot is self-acquired property of defendant no.1.

5. The defendants carried forward Appeal mainly in respect of land Gut No.405 contending that defendant no.1 had repaid family loan by selling gold ornaments of his wife defendant no.2-Urmila. In lieu of that, land Gut No.405 has been given to her. As such, it is a self-acquired property of defendant no.2-Urmila. The Appellate Court observed that in absence of evidence in support of contention that gold ornaments of Urmila were sold and proceeds

were utilized for satisfying loan of the joint family, the case of the defendants cannot be accepted.

6. Mr. Wani, learned Advocate appearing for the appellants submits that Late Jagatrao Patil had two sons namely Subhash and Gulabrao. The defendant no.2 is wife of Gulabrao. The defendant no.1-Gulabrao repaid family loan by selling gold ornaments of his wife Urmila. Therefore, said land was exclusively given to Urmila. Accordingly, her name was mutated. Although defendants have examined as many as five witnesses in support of their defence to contend that Rs.50,000/- was family loan and for repayment of such loan defendant no.2 has sold her gold ornaments, there is nothing on record to show that any family loan was really in existence and amount received after sell of gold ornaments was utilized for repayment of loan. The Trial Court as well as Appellate Court observed that no documentary evidence is placed on record to show that family debt was in existence and sell of gold ornaments of defendant no.2 was towards realization of such loan.

7. In that view of the matter, concurrent finding of facts arrived by Courts below on appreciation of evidence need not be disturbed in Second Appeal. No substantial question of law arises for consideration in this Second Appeal.

8. Consequently, Second Appeal stands dismissed.
9. In view of dismissal of Second Appeal, nothing survives in the Civil Application and the same is accordingly disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2025