



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

**SECOND APPEAL NO. 549 OF 2015
WITH CIVIL APPLICATION NO. 12362 OF 2015
IN SA/549/2015**

**LAXMAN RAKHMAJI PATIL
VERSUS
MATHURABAI TRIMBAK CHINTAMANE AND OTHERS**

...

Advocate for Appellant : Mr. Nitin Keshavrao Chaudhari.
Advocate for Respondent Nos. 1 to 3, 4/c, 4/e, 4/f, 5 & 6 : Mrs.
Aute Janabai Sonaji.

...

**WITH
CIVIL APPLICATION NO. 9762 OF 2018
IN CA/12362/2018 IN SA/549/2015**

**DATTATRAY VINAYAK GORE AND ANR
VERSUS
LAXMAN RAKHMAJI PATIL AND ORS**

...

Advocate for Applicants : Mrs. Aute Janabai Sonaji.
Advocate for respective Respondents : Mr. Nitin K. Chaudhari.

...

**CORAM : SHAILESH P. BRAHME, J.
DATE : 09.09.2025**

FINAL ORDER :-

1. Heard both sides finally.
2. Being aggrieved by judgment and decree dated 20.09.2010 passed in RCS.No.58 of 2007 awarding 1/6th share to the plaintiffs and common judgment and decree dated 14.08.2014 passed in RCA.No.45 of 2011 and RCA No.340 of

2010 by Ad-hoc District Judge, Ahmednagar, present appeal is filed. Appellant is original defendant No.4 who is the purchaser vide sale deed dated 17.08.2005 to the extent of 25 R. from land Gut No.561.

3. Respondent Nos.1 to 3 are sisters who are plaintiffs and respondent Nos.4 to 6 are their brothers who are defendant Nos.1 to 3. RCS.No.58 of 2007 was filed for partition and possession in respect of land Gut No.561 which is measuring 76 R. and Gut No.562 measuring 1 R. and comprising of a well. The suit properties were belonging to Asarabai, mother of plaintiffs and defendants. She died on 24.10.1973. Respondent No.4 Vikram sold 25R. from Gut No.561 to present appellant on 17.08.2005.

4. Respondent Nos.4 to 6 did not appear in the suit though they were duly served. They did not contest the suit and participate in the proceedings. The suit proceeded ex-parte against them. Lateron, after death of respondent No.4 Vikram, his legal heirs were brought on record and they filed written statement supporting the plaintiffs.

5. The suit is contested by the appellant/defendant No.4. It was contended that there was already partition in the family.

There were other properties of the family which were not included in the suit. The members of the family were separated and respondent Nos.4 to 6 disposed of their respective shares. It is contended to be collusive suit. It is further contended that he is bonafide purchaser for value.

6. Trial Court decreed suit awarding $1/6^{\text{th}}$ share vide judgment and decree dated 20.09.2010. Being aggrieved, RCA.No.45 of 2011 was filed by respondent No.5 Dattatraya and RCA.No.340 of 2010 was filed by appellant/defendant No.4. By common judgment and decree, RCA.No.45 of 2011 was partly allowed and RCA.No.340 of 2010 was dismissed. A decree of the Trial Court was modified clarifying that the siblings are entitled to $1/6^{\text{th}}$ share each in the suit properties and the equities are directed to be adjusted by allotting land transferred to the appellant to respondent No.4 Vikram.

7. Learned counsel for the appellant submits that both the Courts below passed unexecutable decree. In the absence of decree of possession, no partition can be effected. My attention is adverted to Order 21 Rule 25, Order 20 Rule 18 and Section 54 of CPC. It is further contended that the title of Asarabai is not clear as sale deed was not produced. It is further contended that suit was hopelessly barred by

limitation. Asarabai was not the absolute owner of the properties and respondents are not entitled to any share atleast to the extent of Gut No.561.

8. Per contra, learned counsel for the respondents supports impugned judgments and decree. It is submitted that concurrent findings of facts are not liable to be disturbed. It is further submitted that relief of possession is consequential and once parties are allotted shares, the decree of possession is implicit. A reliance is placed on judgment of ***Ramrao Tukaramji Dindalkar (Dead) through L.Rs. in Second Appeal No.588 of 2005.***

9. Both Courts below have recorded that there was no partition and respondents who are the siblings are entitled to 1/6th share each in the suit properties. The suit lands were owned by Asarabai, their mother who died on 24.10.1973. The respondents/plaintiffs did not seek any declaration in respect of sale deed dated 17.08.2005 executed by respondent No.4 Vikram in favour of appellant. Both Courts below did not upset the sale transaction.

10. The Lower Appellate Court almost confirmed the decree passed by the Trial Court with certain modifications. Its a

common knowledge that in a suit for partition, all are plaintiffs, except the purchasers and once the suit for partition is decided to be decreed then the members of the family are entitled to the shares, notwithstanding their status in the suit. Lower Appellate Court is rightly allowed RCS.No.45 of 2011 preferred by respondent No.5 Dattatraya.

11. I have gone through provisions of CPC as referred by learned counsel for the appellant. The tenor of the suit is that it is for partition and separation of share by metes and bounds. It would be hyper technical approach to reverse the decree passed by Courts below only because relief of separation of share has not been granted. Separation of shares by metes and bounds is a consequential relief. Once a declaration is given that members of the family are entitled to 1/6th share each it is implicit that the procedure under Section 54 of CPC would be followed and possession of the share would be given. The objection that the decree is unexecutable sans merit.

12. It is pertinent to note that sale executed in favour of the appellant has not been challenged in the suit. Both Courts below did not grant any declaration divesting the appellant from 25 R. of land received by sale deed dated 17.08.2005. It is detrimental for the appellant to contend that Asarabai

original owner had no title of the suit lands. Such a inconsistency of the appellant has no merit.

13. The issue of limitation was dealt with by the Trial Court as well as Lower Appellate Court. The findings of facts recorded in that regard warrant no interference.

14. A specific findings has been recorded by the Trial Court in paragraph No.14 of the judgment that sale deed executed in favour of the appellant was not assailed and only contention of the plaintiffs was to allot the area purchased by the appellant to vendor. Respondent Nos.4 to 6 did not contest the suit. The Lower Appellate Court also accepted the plea in RCA.No.45 of 2011 to adjust the equities by allotting 25 R. purchased by the appellant to the share of respondent No.4 Vikram.

15. In case of Ramrao, one of the substantial questions of law was framed as to whether suit for partition and possession was maintainable without having declaration. It was answered in affirmative. The points are distinguishable. In the present case, the suit was not contested. The issue was not germane. Hence, the case cited is not helpful.

16. In view of the findings recorded by both Courts below, I am not being persuaded by the appellant that there is any

substantial questions of law involved in the matter. I do not find that there is any perversity or patent illegality in the judgment and order passed by Lower Appellate Court specially in adjusting the equities. There is no merit in the second appeal.

- (i) Second appeal is dismissed.
- (ii) It is clarified that 25 R. land of Gut No.561 purchased by appellant shall be allotted to the share of respondent No.4 Vikram and the equities shall be adjusted by directing the legal heirs of Vikram to pay proportionate compensation of excess 12.5 R. to respondent Nos.1 to 3, 5 and 6 equally.
- (iii) The apportionment of excess land referred above shall be made by taking recourse to Section 54 of CPC.
- (iv) In view of disposal of second appeal, pending civil applications do not survive. Civil applications as such are disposed of.

(SHAILESH P. BRAHME, J.)

...