



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

**940 SECOND APPEAL NO. 768 OF 2018
(WITH CIVIL APPLICATION NO.11561/2018)**

1. Laxman Dhondiba Dhawale
Age : 59 years, Occ : Agriculture,
R/o Nighoj, Taluka Parner,
District Ahmednagar.
2. Kamal Prabhakar Dhawale
Age : 59 years, Occ : Agriculture,
R/o As above.
3. Santosh Prabhakar Dhawale
Age : 38 years, Occ : Agriculture,
R/o As above.
4. Sampat Prabhakar Dhawale
Age : 37 years, Occ : Agriculture,
R/o As above.
5. Arun Prabhakar Dhawale
Age : 40 years, Occ : Agriculture,
R/o As above.
6. Sadashiv Dhondiba Dhawale
Age : 41 years, Occ : Agriculture,
R/o As above.
7. Shankar Dhondiba Dhawale
Age : 55 years, Occ : Agriculture,
R/o As above.
8. Lalita Raghunath Dhawale
@ Lalita Shahaji Bhosale
Age : 36 years, Occ : Agriculture,
R/o As above.

..APPELLANTS

-VERSUS-

1. Veenabai Sudam Narwade
Age : 57 years, Occ : Household,
R/o Nighoj, Taluka Parner,
District Ahmednagar.
2. Vijay Raghunath Dhawale
Age : 48 years, Occ : Service,
R/o As above.
At present serving in Indian Military

..RESPONDENTS

...
Advocate for Appellants : Mr. Badakh Vishal S.
Advocate for Respondent No.1 : Mr.Hemant U. Dhage

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CORAM : ROHIT W. JOSHI, J.
Dated : 5th MARCH, 2025

ORAL JUDGMENT :-

. Heard finally with the consent of parties.

2. The parties were made aware about the questions of law that fall for consideration during the course of hearing. Both the learned advocates requested to frame the questions and decide the same finally today itself. Both the learned advocates stated that they could visualize the questions that may arise for consideration and were fully prepared to argue the appeal finally. In view of the above, the substantial questions were framed and decided finally today itself.

3. The present second appeal filed by the original plaintiff nos.1 to 7 and 9. Plaintiff no.8 is arrayed as respondent no.2. The plaintiffs and defendant are sons and daughters of late Dhondiba Dhawale, who died intestate on 03.08.1999. During his life time, deceased Dhondiba had executed two sale deeds dated 02.06.1994 and 12.11.1997 in favour of defendant, who is his daughter, thereby transferring 0.23 HR and 0.73 HR land respectively in Gat No.2688 of village Nighoj, Tq. Parner, Dist. Ahmednagar. Plaintiffs who are other sons and daughters of Dhondiba filed Regular Civil Suit No.497/2001 challenging the sale transaction on the ground that the said properties were ancestral properties and the father had sold the same in favour of the defendant without any legal necessity. The plaintiffs claimed that sale transactions were not binding on them, and therefore, not valid to the extent of their share in the said properties. Apart from the aforesaid properties, three other properties bearing Gat Nos.1471, 2683 and 2695 were included in the suit and decree for partition and separate possession was sought in respect of these properties.

4. The defendant filed written statement opposing suit contending that there was partition in the family in the year 1968 and the father Dhondiba and sons were placed in separate possession of their respective shares as per the said partition. It was stated that mutations were also effected in the names of respective persons as per the said partition. It is contended that the suit property bearing Gat No.2688 had fallen to the share of the father and as such he became absolute owner thereof. It was claimed that after partition, the sons and daughters of Dhondiba could not have claimed any right, title or interest as also share in the said property.

5. After framing issues, the learned trial Court recorded evidence of respective sides and after hearing the arguments was pleased to decree suit in its entirety vide judgment and decree dated 02.09.2013. The learned trial Court has held that there was no partition in the family as alleged by the defendant. It is held that there was family arrangement in the family which cannot be said to be a partition. In view of such findings, it is held that Dhondiba was not entitled to sell the property to the defendant since the

legal necessity was not proved. Thus, the learned trial Court held that sale deed was not binding on the plaintiffs and not valid to the extent of their shares and accordingly, the decree for partition and separate possession was passed by the learned trial Court with respect to all the suit properties including the suit property, which was sold by Dhondiba to the defendants.

6. Aggrieved by the said decree, the defendant filed first appeal, being Regular Civil Appeal No.280/2013. The learned First Appellate Court has allowed the appeal vide judgment and decree dated 08.06.2018. The learned First Appellate Court has held that there was partition in the family, which was evidenced by mutation entries. The learned First Appellate Court has also referred to sale deeds executed by plaintiff no.1-Laxman, plaintiff no.2 – Komal, plaintiff no.3 – Santosh, plaintiff no.4 – Sampat, plaintiff no.5 – Arun, plaintiff no.8-Vijay and plaintiff no.9 – Lalita whereunder these plaintiffs had also sold properties that fell to their respective shares in the partition. In view of the above, the learned First Appellate Court has held that Dhondiba was

absolute owner of property, which had fallen into his share and was therefore entitled to sell the same at his absolute discretion. In the light of above, the learned First Appellate Court has held that the sale deed was binding on the plaintiffs. The learned First Appellate Court has thus allowed the appeal with costs by reversing the judgment and decree passed by the learned trial Court. However, having held that the sale deed with respect to one of the suit properties was legal and valid, the learned First Appellate Court has reversed the entire decree thereby reversing decree by the learned Trial Court granting partition with respect to other properties as well.

7. In the aforesaid backdrop, plaintiff nos.1 to 7 and 9 have filed the present Second Appeal. The plaintiff no.8 is arrayed as respondent no.2. Respondent no.1 is original defendant.

8. After hearing the parties, the following substantial questions of law arise for consideration in my opinion :-

(i) Whether there was partition in the family as held by the learned First Appellate Court and consequently was the deceased Dhondiba entitled to sell the suit property bearing Gat No.2688 as his separate property ?

(ii) Was the learned First appellate Court correct in reversing the entire decree on recording a finding that the sale deed with respect to one of the suit properties was legal and valid and as such, prayer for partition with respect to the same could not be granted ?

Question No.(i) :-

9. Learned counsel for the appellant Mr.V.S. Badakh has vehemently argued that there is no evidence on record in order to support the finding recorded by the learned First Appellate Court with respect to partition in the family. He contends that mutation entries by themselves cannot confirm any title since they are merely recorded for fiscal purposes. He submits that there must be some document/s evidencing partition and in the absence of such document/s, the findings

recorded by the learned Trial Court that there was no partition but merely family arrangement between the family members regarding distribution of the family properties ought to have been accepted by the learned First Appellate Court. He places reliance on the judgment of this Court in the matter of ***Mahadu Appa Wanjole Vs. Laxman Veerappa Wanjole and others*** reported in ***2008(5) Mh.L.J. 680***, wherein it is held that mutation entries cannot be read as proof of partition since they are merely for fiscal purpose.

10. Per contra, Mr.Hemant Dhage, learned Advocate appearing for respondent No.1 opposes the contentions stating that the partition had in fact taken place in the family and accordingly mutation entries were recorded in the year 1968. He contends that long standing entries of mutation have strong presumptive value of correctness. According to him, these mutation entries clearly establish the fact of partition in the family. He further contends that an act of separation of property in the family may be called partition or family arrangement. Nomenclature of mode of separation does not matter. What is material is that there must be some

arrangement under which the severance takes place. He contends that the family arrangement cannot be said to be an adhoc or temporary arrangement by any stretch of imagination having regard to the fact that the mutation entries regarding the separate possession are recorded way back in the year 1968. He further contends that the arrangement of separation of properties is acted upon by all the parties, in as much as the plaintiffs have themselves admitted that plaintiff nos.1, 2, 3, 4, 5, 8 and 9 have sold some portion of the properties that had fallen to their shares after severance of joint family property, either by partition or by family settlement. He also argued that having sold the properties themselves, the plaintiffs are estopped from contending that father Dhondiba could not have sold the properties which are fallen to their share.

11. The contention of Mr. Bora is true that normally there should be documentary evidence in order to substantiate partition in the family. However, each case is required to be viewed in a peculiar backdrop of facts. In the present case, mutation entries regarding the separate possession are

recorded in the year 1968. These mutation entries are not disbelieved by the learned trial Court as well. By placing reliance on these mutation entries, learned trial Court has held that the mutation entries reflected a family arrangement under which the properties of the Joint Hindu Family were given in possession of different coparceners albeit without severance. The learned trial Court then records that such family arrangement cannot be construed as partition in the family, and therefore, despite separate possession, the status of properties will be joint. The learned First Appellate Court has reversed this finding principally relying upon the sale deeds executed by different members of the family. The learned First Appellate Court holds that the fact that different family members sold properties which were placed in their possession is sufficient to hold that there was partition in the family by metes and bounds.

12. Having heard respective submissions and having gone through the judgments delivered by the learned Courts, I am of the considered opinion that the learned First Appellate Court is right in holding that there was partition in the family

under which different properties were placed in possession of different coparceners. This partition is completely acted upon and accepted by all the family members, in as much as, the properties which had fallen to the share of different members have been sold by them. Admittedly, sale deeds executed by different plaintiffs have not been challenged. Those properties are also not included as suit properties in the suit. In that view of the matter, I cannot find any fault with the findings recorded by the learned First Appellate Court that there was indeed partition in the family which is evidenced by mutation entries recorded in the year 1968 itself. I am also in agreement with the arguments advanced by learned Advocate Mr.Hemant Dhage for respondent no.1 that having sold the properties that had fallen to their share in the partition, the plaintiffs are estopped from challenging the sale deeds executed by the father with respect to property, which had fallen to his share in the partition. Reliance in this regard is placed to the judgment of the Hon'ble Supreme Court in the case of *Kale and others Vs. Deputy Director of Consolidation and others* reported in *AIR 1976 SC 807*. In the said case, a family arrangement was arrived at which was an unregistered

document. The question which fell for consideration before the Hon'ble Supreme Court was as to whether an unregistered family settlement could be read in evidence. The Hon'ble Supreme Court has held that unregistered document of family settlement can be read in evidence for collateral purpose of deciding nature of possession. Likewise, it is also held that when parties enter into an arrangement regarding distribution of property which is accepted and acted upon by all the concerned, they will be estopped from questioning the same. It is also held that such documents even if unregistered or inadequately stamped cannot be ignored if the same are accepted and acted upon. The judgment of the Hon'ble Supreme Court is squarely applicable to the facts of the case. Just as Registration Act and Stamp Act are provisions of law, the rule of estoppel statutorily recognized by Section 115 of the Evidence Act is also a legal provision, which cannot be disregarded.

13. In that view of the matter, substantial question of law at Sr. No.1 will have to be answered against the plaintiffs/appellants and in favour of defendant no.1 –

respondent. I hold that there was partition or family arrangement in the family in the year 1968 by virtue of which severance in Joint Hindu Family property was effected and therefore, Dhondiba was entitled to alienate the suit property bearing Gat No.2688 since it was his separate property. The sale deeds executed by Dhondiba in favour of defendant no.1 are legal, valid and binding on all the plaintiffs. The said property cannot form a subject matter of partition since defendant no.1 is true, lawful and absolute owner of the same.

Question No.(ii) :-

14. Admittedly Dhondiba had sold only one property. Other three properties also belong to Dhondiba. Dhondiba has expired in the year 1999. Dhondiba is survived by six class-I legal heirs namely plaintiff no.1 – Laxman, deceased Prabhakar/husband of plaintiff no.2 and father of plaintiff nos.3, 4 and 5, plaintiff no.6-Sadashiv, plaintiff no.7-Shankar, deceased Raghunath, father of plaintiff no.8 and plaintiff no.9 and defendant no.1 Veena. The learned First Appellate Court probably has lost sight of the fact that decree

for partition and separate possession is also passed in respect of other properties and therefore, has dismissed suit in its entirety. The learned First Appellate Court was error in dismissing suit for partition with respect to three properties bearing Gat Nos.1471, 2683 and 2695. The judgment and decree passed by the learned First Appellate Court warrants interference to this extent. It is held that the above three properties held by deceased Dhondiba should be partitioned *inter se* between the plaintiffs and defendant in accordance with the judgment and decree dated 02.09.2013 passed by the learned Civil Judge, Junior Division, Parner in Regular Civil Suit No.479/2001.

15. In view of the aforesaid second appeal is partly allowed.

16. The parties to bear their own costs.

17. Civil Application, if any stands disposed of.

(ROHIT W. JOSHI, J)