



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

Second Appeal No. 554 Of 2023

Prabhu Gunda Birajdar, (Since died)

Through lrs,

- A] Udhav Prabhu Birajdar,
Age : 50 years, Occ. Agriculture,
- B] Madhukar Prabhu Birajdar,
Age : 48 years, Occ. Agriculture,
- C] Balaji Prabhu Birajdar,
Age : 43 years, Occ. Agriculture,
- D] Smt. Sulabai Prabhu Birajdar,
(died LRS are A-C and E-F already on record)
All R/o. Lamjana, Tq. Ausa,
District Latur.

E] Sow. Sunita Prakash Tongale,
Age : 30 years, Occ. H.H.,
R/o. Near Ausa Maruti, Latur.

F] Sow. Anita Chitambar Patil,
Age : 28 years, Occ. H.H.,
R/o, Savalsur, Tq. Omerga,
District Osmanabad.

.. Appellants

Versus

- 1] Shamrao Deorao Birajdar,
Age : 85 years, Occ. Agriculture,
- 2] Narsing Shamrao Birajdar (Died)
L.Rs.
- 2/1] Smt. Mandakini Narsing Birajdar,
Age : 45 years, Occ. H.H.,
- 2/2] Pravin Narsing Birajdar,
Age : 30 years, Occ. Private Service,
- 2/3] Prashant Narsing Birajdar,
Age : 28 years, Occ. Service,
- 2/4] Pradeep Narsing Birajdar,
Age : 24 years, Occ. Education,
All R/o. Appa Niwas, Back side of
Bidve College, Kalamb Road, Latur
Tq. and District Latur.

- 3] Pandit Shamrao Birajdar (Died)
L.Rs.
- 3/1] Smt. Kalpana Pandit Birajdar,
Age : 42 years, Occ. H.H.,
- 3/2] Pramod Pandit Birajdar,
Age : 22 years, Occ. Education,
- 3/3] Pratiksha Pandit Birajdar,
Age : 19 years, Occ. Education,
- 3/4] Prachi Pandit Birajdar,
Age 18 years, Occu. Education,
All R/o Lamjana, Tq. Ausa,
Dist. Latur.
- 4] Virappa Gunda Birajdar (Died)
L.Rs.
- 4/1] Smt. Prabhawati Irappa Birajdar,
Age : 60 years, Occu. H.H.,
R/o Lamjana, Tq. Ausa, Dist. Latur.
- 4/2] Kondabai Shivkanth Dalimbe,
Age : 40 years, Occu. H.H.,
R/o Lamjana, Tq. Ausa, Dist. Latur.
- 4/3] Kanchan Prafullakumar Mitkari,
Age : 35 years, Occu. H.H.,
R/o Ausa, Tq. Ausa, Dist. Latur.
- 4/4] Archana Balaji Pawade,
Age : 30 years, Occu. H.H.
R/o. Kharosa, Tq. Ausa, Dist. Latur.
- 5] Limbu Gunda Birajdar,
Age : 78 years, Occu. Agriculture,
(Died), L.Rs. :-
- 5/1] Sojarbai Limbu @ Limbraj Birajdar,
Age : 70 years, Occu. Agriculture,
R/o Lamjana, Tq. Ausa, Dist. Latur.
- 5/2] Dagdu Limbu @ Limbraj Birajdar,
Age : 35 years, Occu. Agriculture,
R/o Lamjana, Tq. Ausa, Dist. Latur.
- 5/3] Dattu Limbu @ Limbraj Birajdar,
Age : 30 years, Occu. Agriculture,
R/o Lamjana, Tq. Ausa, Dist. Latur.
- 5/4] Mahadabai Maruti Bhujbal,

Age : 50 years, Occu. H.H.
R/o. Chincholi (Jogan), Tq. Ausa,
Dist. Latur.

5/5] Sukumarbai Veerbhadra Sangve,
Age : 40 years, Occu. H.H.,
R/o Lamjana, Tq. Ausa, Dist. Latur.

.. Respondents

* Advocate for the Appellants :
Mr. Suraj V. Gundre

CORAM : SHAILESH P. BRAHME, J.
DATE : 14th JULY 2025

FINAL ORDER :

1. Heard Mr. Suraj V. Gundre learned Counsel for the Appellants.
2. Appellant is challenging concurrent findings of facts by which his suit for declaration and injunction came to be dismissed. Respondents are original Defendants, who are related to him. The relationship has not been disputed.
3. Appellants filed RCS No.299/2007 contending that land survey no.43 measuring 26 Acres and 8R was partitioned between the Appellant's father Gunda and uncle Devrao. Appellant's father was allotted 17 Acres 26R and it was given survey no.43/B. His uncle was allotted 8 Acres 22R which was given survey no.43/A. Khasra Pahani Patra was prepared by the concerned Department disclosing the area of survey nos. 43/B and 43/A. It is contended that there was further partition amongst Appellant and his brothers – Respondent No.4-Virappa and Respondent No.5-Limbu in land gut no.43B. Appellant was allotted 7 Acres and 20R. Respondent No.4 was allotted 9 Acres 6R and Respondent No.5 was allotted 1 Acre. It is contended that 7/12 extract showed less area i.e. 5 Acre and 20R. Respondents started obstructing possession of the Appellant and the suit was required to be filed.

4. The claim of the Appellant is contested by the Respondent Nos. 1 to 3 by filing written statement. It is pointed out that there was one more brother of Gunda and Devrao i.e. Maruti. The factum of partition amongst between Gunda and Devrao was disputed. It is contended that revenue record was properly prepared which was not challenged by either of the parties.

5. Appellant adduced oral evidence of three witnesses. Respondents adduced oral evidence of four witnesses. Trial Court dismissed the suit which is confirmed by Lower Appellate Court.

6. Learned Counsel Mr. Gundre submits that Khasra Pahani Patra at Exhibit-7 and for further years Exhibits – 78 to 85, disclosing 7 Acres and 26R allotted to Appellant's father and 8 Acres and 22R allotted to uncle are prepared in accordance with law. In pursuance of that 7 x 12 should have been prepared. It is contended that Khasra Pahani Patra would prevail over other record. It is further submitted that in further partition, Appellant was allotted 7 Acres and 20R of survey no.43/B and he is in possession of the same, despite that less area is shown in the 7x12 extract. It is further submitted that application under Order 26 Rule 9 was not decided though it was directed to be decided at the time of final adjudication of the appeal. It is submitted that above, submissions would constitute substantial questions of law to entertain Second Appeal.

7. Both the Courts below have discarded Khasra Pahani Patra Exhibits – 7, 78 to 83 on the ground that there was overwriting in the total area shown to the account of the Appellant's father and uncle. In that regard, Respondents examined DW-4 who happened to be Tahsildar AUSA. His deposition candidly indicates that overwriting are not official corrections. The edifice of the Appellant's case is founded on the Khasra Pahani Patra. The witness clearly admitted handwriting of overwriting is

in different ink. I find no reason to disturb appreciation of evidence.

8. The 7x12 extract produced on record clearly indicates that survey no. 43/B shows 15R and 26R to the account of Appellant's father – Gunda and 10 Acres and 22R of survey no.43/A to the account of his uncle Devrao. Those are consistent entries. The revenue entries have not been challenged by either of the parties. There is no any other material placed on record by the Appellants to corroborate his claim. Both the Courts below have rightly appreciated the facts.

9. Appellant could not corroborate his further theory of partition amongst himself and his brothers – Respondent Nos. 4 and 5. His witness PW-3 has given admissions that 7x12 extract of survey no.43/B shows only 15R and 26R which falsifies his case. I do not find that the findings recorded by both the Courts below can be said to be illegal and perverse.

10. The Lower Appellate Court indicated that application Exhibit-56 filed by the Appellant for appointment of Commissioner under Order 26 Rule 9 was to be decided at the time of final hearing. But no decision is rendered. That can be said to be mere irregularity. Application was filed at the stage of the Appellate Court. The burden was on the Appellant to make out a case that less area was shown in the revenue record. He failed to discharge the burden. No corroborative material is placed on record. I do not find that any prejudice is caused to the Appellant for not deciding application Exhibit-56.

11. I find no merit in the Appeal. The substantial questions of law which are pressed into service are devoid of any substance. Second Appeal is dismissed.

**SHAILESH P. BRAHME
JUDGE**

Naresh