



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

**SECOND APPEAL NO. 458 OF 2023**

Leebai W/o Rambhau Jadhav .. Appellant

**Versus**

Digambar S/o Shankar Pakhre  
and others .. Respondents

Shri Revan P. Bhomkar, Advocate for the Appellant.  
Shri Mahesh R. Sonawane, Advocate for the Respondent No. 1 to 7.

**CORAM : SHAILESH P. BRAHME, J.  
DATE : 12TH SEPTEMBER, 2025.**

**FINAL ORDER :**

. Heard both sides.

2. Concurrent findings of facts are assailed in the present second appeal by the original defendant No. 2 - Leelabai. Respondents had filed R.C.S. No. 865 of 2009 for partition, possession and declaration against their deceased father Shankar and the present appellant - Leelabai. It was partly decreed on 04.12.2018 to the extent of possession. Being aggrieved, appellant preferred R.C.A. No. 14 of 2019, which ended in dismissal on 20.03.2023.

3. The respondents were original plaintiffs and their father Shankar was defendant No. 1, who died on 03.05.2015. The

subject matter was block No. 16 and 18, stated to be undivided ancestral properties. The defendant No. 1 - Shankar alienated and parted with possession of 06 Acres 11 Guntha from gut No. 16 to appellant - defendant No. 2 on 27.11.2000. The said alienation is questioned in the suit.

4. The suit is contested by the appellant on the ground that deceased Shankar had legal necessity of performing marriage of daughters and he was required to sell out part of gut No. 16, hence a document was executed on 27.11.2000. Appellant is stated to be in possession since 2000. A defence is also taken that it's a lease deed of 99 years.

5. Both the parties led evidence before the Trial Court. It is held by the Trial Court that due to death of father Shankar there is no contest for relief of partition. Hence the Trial Court and the lower Appellate Court only took into account the relief of declaration and possession in respect of alienation made by deceased Shankar in favour of the appellant - defendant No. 2 on 27.11.2000.

6. Learned counsel for the appellant Mr. Bhumkar submits that both the Courts below have committed grave error of jurisdiction as appellant was in possession since 27.11.2000 in view of sale transaction as well as lease deed. It is submitted that interest is acquired by the appellant on 27.11.2000 and her possession is lawful. It is further submitted that proper issues

were not framed by the Trial Court in respect of legal necessity, entitlement to 1/8th share and the decrees passed by both Courts below are unsustainable. Learned counsel for the appellant further submits that land gut No. 16 is a government land and that could not have been subject to the partition. It is further submitted that the respondents are unable to prove their entitlement and the share claimed by them has not been dealt with by Courts below. Learned counsel adverted my attention to substantial questions of law enumerated in clause Nos. (ii), (xi), (xiii) and (xiv) annexed with the appeal memo.

7. Per contra, learned counsel Mr. Mahesh Sonawane for the respondents supports impugned judgments and decrees. It is submitted that both the Courts below after proper appreciation of material on record and considering the evidence have decided against the appellant. It is contended that there is no perversity or illegality in the findings recorded by the Courts below. It is further submitted that no plea was ever raised in the written statement that block No. 16 was a government land and could not have been subjected to partition or alienation.

8. I have gone through the judgments passed by the Courts below. Due to death of defendant No. 1 - Shankar on 03.05.2015 the relief of partition has become redundant. Both the Courts below did not consider said relief because the suit to the extent of relief of partition stood abated. Both the Courts below dealt with relief of declaration and possession, survived in the suit.

9. The contesting party defendant No. 1 - Shankar was no more and his heirs were not brought on record to replace him, rather all of them are the plaintiffs. Under these circumstances the submissions in respect of partition or allotment of share are inconsequential and need not be taken into account.

10. Both the Courts below have recorded that sell transaction dated 27.11.2000 is not effected by registered instrument. The transaction of lease as proposed by the appellant is also not executed by any registered instrument. In view of Sec. 17 read with Sec. 49 of the Registration Act and in view of Sec. 107 of the Transfer of Property Act, it is held that the theory of the appellant that she received title and possession is not acceptable. These findings are absolutely in consonance with law. No interference is called for. Neither any registered sale deed is produced on record, nor any agreement is pressed into service by the appellant. The transaction occurred between appellant and deceased Shankar on 27.11.2000 is represented to be sale transaction as well as lease. Even the lease deed does not have the registration. There is no perversity or any illegality in recording findings against the appellant.

11. When the issues were framed, appellant had opportunity to request the Court for recasting the same, if there was any mistake. Similarly the grievance could have been agitated in respect of incorrect framing of issues before the lower Appellate

Court. No steps are taken by the appellant. Hence it is impermissible for the appellant to make any agitation about the issues. The grievance regarding framing of issues or points for determination also cannot be countenanced

12. Appellant did not raise any defence that land block No. 16 is a government property and cannot become subject matter of suit for partition. In absence of pleadings, it is not permissible to raise such pleading for the first time before the High Court. There is absolutely no material on record to show that land gut No. 16 is the government land. It cannot be lost sight of the fact that appellant is claiming interest in the self same land. Considering overall situation, plea pressed into service for the first time in High Court has no merit.

13. Learned counsel for the appellant has relied on the **judgment dated 03.03.2022 of the Apex Court in the matter of Padhiyar Prhladi Chenaji (Deceased) Through L.Rs. Vs. Maniben Jagmalbhai (Deceased) through L.R.s and others in Civil Appeal No. 1382 of 2022.** Its facts are distinguishable. In that case a registered sale deed was pressed into service. Such is not in the present case. The facts of the present case are distinguishable, hence judgment of the Supreme Court would not enure to the benefit of the appellant.

14. I find that no substantial question of law is involved in the second appeal. Second appeal is dismissed.

15. After pronouncement of the order in the second appeal as well as civil application, learned counsel for the appellant prays for protection of her possession for a period of four (04) weeks from today.

16. Learned counsel Mr. Sonawane for the respondents opposes the prayer. It is submitted that no interim relief was operating. The legal possession secured by the decree holders is objected and they are dispossessed. Under these circumstances no indulgence is called for.

17. I have already recorded that possession of the appellant was illegal. There was no lawful instrument in her favour. The possession was handed over to the decree holders after following due procedure of law in R.D. No. 153 of 2019. By doing overt act on 12.06.2024 the decree holders are dispossessed due to the brazen mistake of the appellant, I am not inclined to exercise any discretionary powers in her favour. It is a matter of record that her possession was not protected by granting any interim protection during pendency of second appeal. The prayer made by the appellant stands rejected.

**[ SHAILESH P. BRAHME J. ]**