



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

**SECOND APPEAL NO. 308 OF 2024
WITH
CIVIL APPLICATION NO. 10807 OF 2024**

Gurunath S/o Shyamrao Mane
VERSUS
Gajendra Shyamrao Mane

Mr. A. S. Bhagwat, Advocate for Appellant
Mr. A. A. Sabnis a/w Pranav Dhakane, Advocate for Respondent

CORAM : R. M. JOSHI, J.
DATE : 22 July, 2025

PER COURT :-

1. This Appeal takes exception to the concurrent findings recorded by Trial Court and confirmed by the First Appellate Court in Regular Civil Suit No. 408/2012 and Regular Civil Appeal No. 28/2017 respectively.
2. The facts as they appear from the record indicate that plaintiff and defendant are the real brothers. It is specific case of plaintiff that the plaintiff and defendant purchased the suit property from joint income. It is pleaded in the plaint that both were doing labour work. It is also specifically stated that there is no ancestral property of plaintiff and defendant. It is averred by the plaintiff that the agreement of sale was executed in favour of the plaintiff and possession of the land was handed over by the vendor to him on the same date

i.e., on 16.03.1996 and that since then he is in possession thereof. According to the plaintiff, the sale deed came to be executed in the name of defendant.

3. The defendant filed written statement claiming the purchase of the suit property from his own income and there being no contribution of the plaintiff in the said purchase. It is claimed that since the sale deed has been executed in his favour, he has become exclusive owner of the suit property.

4. Trial Court framed issues and initial burden was on the plaintiff to prove that the suit property is purchased from joint income of plaintiff and defendant. Parties led evidence before the Trial Court. Perused pleadings and evidence on record.

5. Perusal of the evidence indicates that there is no dispute about the fact that agreement to sale in respect of the suit property came to be executed in the name of plaintiff. Further, as admitted by the vendor himself that the possession of suit property was given to the plaintiff and since then he is in possession thereof. The defendant himself has also admitted the fact that the original sale document is with plaintiff. Further more from the cross examination of the plaintiff, it is clear that the plaintiff was having source of income as he was doing labour work as well as was agriculturist.

6. In the light of the these facts, the defendant has not come out with

the case that the sale deed executed in his name is altogether a different transaction. If it was so done, it ought to have been pleaded by the defendant in his written statement.

7. Learned counsel appearing on behalf of the defendant-appellant submits that the both Courts below have committed error in not considering the fact that the sale deed has been executed in favour of defendant and that since he has paid the entire consideration, he has become exclusive owner thereof. In this regard, he sought to be placed reliance on Section 54 of Transfer of Property Act, 1882.

8. This being Second Appeal unless substantial question of law is involved, the Appeal cannot be admitted. The entire contention of the appellant is that the Courts below have committed error in considering the pleadings and evidence on record and the findings recorded by the Courts are perverse in nature.

9. In order to ascertain the said submissions, the pleadings in the plaint are specific with regard to the purchase of the suit property jointly by their brothers and also income of the plaintiff which would enable him to purchase the same. In the written statement, defendant claims to be the sole owner of the property. He however does not disclose the fact that there was

agreement to sale in the name of the plaintiff nor he claims that it is independent transaction. Even otherwise the evidence of the vendor of the suit property indicates that the since the time of agreement to sale, suit property is in possession and under cultivation with plaintiff. Defendant does not dispute the fact that the sale document is with plaintiff. Thus, if the plaintiff is not joint owner of suit property how can he be handed over possession of suit land, pursuant to agreement to sale with him and why would he have the original sale deed executed in name of defendant.

10. If these facts are considered then there was justified reason for the Courts below to accept the case of the plaintiff that the suit property has been purchased by both brothers from their respective income. This is not the case wherein the suit property is claimed to be ancestral property. The requirement for the plaintiff to substantiate his case, was that he had source of income, which he succeeded to establish. This evidence coupled with the other facts leads to irresistible conclusion that the suit property was purchased by both brothers jointly but the sale deed came to be executed in the name of defendant by that itself, he cannot claimed the exclusive owner of the property. Findings recorded by the Trial Court and confirmed by the First Appellate Court cannot be termed as perverse.

11. Hence, no substantial question of law involved in this. Second Appeal stands dismissed. Pending Civil Application stands disposed of.

(R. M. JOSHI, J.)

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