



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

979 SECOND APPEAL NO. 289 OF 2025

DATTAHARI S/O KERBA JADHAV

VERSUS

NARAYAN S/O KERBA JADHAV THROUGH
HIS LRS DIGAMBAR NARAYAN JADHAV AND ANR

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WITH

CIVIL APPLICATION NO. 8199 OF 2025
IN SA/289/2025

WITH

CIVIL APPLICATION NO. 8200 OF 2025
IN SA/289/2025

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Advocate for the Appellant : Mr.Ingole Govind Rangrao

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CORAM : SHAILESH P. BRAHME, J.

DATE : 06th AUGUST 2025

PER COURT :

. Heard learned counsel for the appellant.

2. This second appeal is emanating from concurrent findings of facts in non-suiting the relief for partition, possession and injunction.

3. Appellant original plaintiff had filed R.C.S NO.07 of 2015 for partition, possession against respondent who is his real brother. The subject matter is Gat No.135 situated at village Karegaon, Tq. Dharmabad, Dist. Nanded. The suit land was purchased from the income of joint family vide sale deed on 02.05.1988 in the name of

the respondent who was elder brother and *karta* of the family.

4. The parties were residing jointly with mother and sisters. Due to the disputes in 2012, there was oral partition at the intervention of uncles viz. Maroti Shinde and Ramrao Shinde. The respondents refused to act in pursuance of oral partition which constrained the appellant to institute the suit.

5. The suit is contested by the respondents on the ground that R.C.S No.84 of 1984 was filed by the appellant for partition and it was decreed. Since the decree, the parties are separated. The suit land is self-acquired property purchased from 02.05.1988.

6. Both the parties led oral evidence. The pleadings and the judgment dated 19.11.1984 rendered in R.C.S No.84 of 1984, mutation entry at Exhibit-35 and 7/12th extract at Exhibit-22 are placed on record.

7. Both the courts below discarded the theory of appellant that suit land is the joint family property and purchased in the name of the respondent. Referring to the judgment and decree passed in R.C.S No.84 of 1984, it is concurrently held that property ceased to be a joint family property and after separation respondents had source to purchase the suit land.

8. Learned counsel for the appellant submits that he was minor when R.C.S No.84 of 1984 was filed on 16.10.1984. The respondents fraudulently showed him to be of 19 years old and got filed the suit.

Respondent has taken undue advantage of the minority of the appellant. It is vehemently contended that parties were joint till 2012 and there is oral evidence to corroborate the same.

9. Learned counsel would further submit that respondent had no source of income. He was *karta* and therefore sale deed was executed in his favour. Learned counsel would refer to the documents annexed to the civil application to show that appellant was minor when earlier suit was filed. It is submitted that both the courts below have committed perversity in rejecting the appellant's claim. The substantial questions of law which are annexed to the memo of the application at page No.10 are pressed into service.

10. Both the courts below have concurrently recorded findings of facts after appreciating oral and documentary evidence on record. Learned counsel for the appellant is unable to point out perversity or patent illegality from the findings of the courts below.

11. Appellant had filed R.C.S No.84 of 1984 on 16.10.1984 for partition and possession in respect of various properties. By judgment and decree dated 19.11.1984, suit was decreed. Appellant was allotted couple of properties. The status of the joint family ceased from the date of decree. Mere joint residence of the parties would not confer the reunion in the legal sense. The oral evidence that parties were residing together till 2012 is inconsequential.

12. After partition by intervention of the Court, suit land was purchased by registered sale deed dated 02.05.1988. It was

purchased exclusively in the name of the respondent. There is every reason to believe that after partition of the joint family, suit land was purchased by the respondent from his own income. Exclusive ownership of respondent is corroborated by 7/12th extract at Exh.22, Mutation entry at Exh.35. I do not find any perversity in the findings recorded by both the courts below.

13. Appellant has come up with a plea that he was minor when earlier suit was instituted and decided. Respondent being *Karta* took disadvantage. Appellant was allotted properties of the joint family in the partition. If he had grievance against conduct of the respondent, he would have challenged the decree on the ground of fraud or misrepresentation. He did not even challenge mutation entry or the revenue record. This shows that decree passed in the earlier suit was agreeable to him and he was being benefited by it. I find no substance in the substantial questions of law which are pressed into service.

14. For the reasons stated above, I find no merit in the second appeal.

15. Second appeal is dismissed.

16. Civil applications are disposed of.

[SHAILESH P BRAHME, J.]