



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

SECOND APPEAL NO. 539 OF 2021

Venkat Narayan Valse and others .. Appellants

Versus

Shakuntalabai Tukaram Gatte .. Respondent

Shri Tukaram M. Venjane, Advocate for the Appellants.
Shri Nikhilesh K. Tungar, Advocate for the Respondent.

CORAM : SHAILESH P. BRAHME, J.
DATE : 25TH SEPTEMBER, 2025.

FINAL ORDER :

. Heard both sides.

2. Second appeal is emanating from concurrent findings of facts in granting decree of partition and possession in favour of the respondent. Both the learned counsels showed readiness to address following substantial questions of law.

(i) Whether judgments and decrees passed by both the Courts below are against the principles of natural justice for not giving opportunity to file written statement ?

(ii) Whether lower Appellate Court has properly exercised the jurisdiction in dealing with the grounds of objections raised in respect of valid service of summons after

transfer of the proceedings from Udgir Court to Deoni Court and that of giving opportunity to file written statement ?

3. With the consent of the parties I have taken up the second appeal for final disposal at the admission stage. Learned counsel for the respondent has already placed on record the documents of the Trial Court in respect of bailiff report, appearance pursis of the appellant No. 3 and vakalatnama of the appellant No. 3.

4. Respondent had filed R.C.S. No. 59 of 2009 in the Civil Court at Udgir for partition and possession. In pursuance of the summons appellants caused appearance by engaging a lawyer. No written statement was filed within the time despite extending opportunities to them. No written statement order was passed against them. That was set aside by imposing cost of Rs. 500/-. As no steps were taken for paying cost, matter proceeded without their written statement. No evidence was adduced by them.

5. In the mean time proceedings from the Udgir Court were transferred to Deoni Court on 25.11.2009. Summons were issued to the appellants separately by the Deoni Court. It was reported that summons was duly served on the appellant No. 3. They being members of the family and real brothers, the summons of the appellant No. 1 and 2 were also reported to be accepted by the appellant No. 3. Report to that effect was prepared and submitted before the Trial Court. The suit was decreed partly.

6. Being aggrieved by the decree, R.C.A. No. 08 of 2014 was preferred by the appellants. Specific grounds of objections were raised that they had paid the cost imposed while setting aside no written statement order to their lawyer, who failed to deposit it in the Court and a ground that there was no valid service of summons after transfer of matter to Deoni Court and they were not heard.

7. Learned counsel Mr. Venjane for the appellants submits that the lower Appellate Court committed patent error of jurisdiction in not dealing with the specific grounds of objections, which pertained to the procedure and violation of principles of natural justice. The lower Appellate Court pronounced judgment on the merits of the matter. It is submitted that when record was available and specific grounds were raised, it was the statutory duty of the learned Judge to record findings either way in the impugned judgment. It is submitted that the approach of both the Courts below is against the principles of natural justice. The appellants have valid defence and material to contest the suit. The substantial questions of law need to be answered in the affirmative.

8. Learned counsel Mr. Tungar appearing for the respondent repels the submissions. He would submit that there was valid service of summons in view of Order V Rule 15 of the Code of Civil Procedure. He adverted my attention to the documents produced before this Court namely pursis, bailiff report,

panchanama conducted, appearance of the appellant No. 3 - Ankush, etc. It is submitted that appellants were aware of the proceedings and deliberately they remained absent. He would further submit that the ground for not filing written statement is unsustainable and not supported by any evidence. He would further submit that this Court can look into valid service of summons instead of remanding the matter.

9. I have considered rival submissions of the parties. Admittedly, no written statement was filed by the appellants. In the absence of the pleadings and evidence of the appellants suit was decreed. Before the lower Appellate Court specific grounds were taken by the appellants in respect of forfeiture of right to file written statement as well as valid service of summons after transfer of the matter. Impugned judgment does not reflect any application of mind. A vital aspect is lost sight of.

10. Initially suit was filed at Udgir Court. Thereafter on 25.11.2009 it was transferred to the Deoni Court. After transfer summons were issued to the appellants. Out of them, appellant No. 3 - Ankush appeared in the suit by engaging a lawyer. Appellant Nos. 1 and 2 did not cause their appearance and bailiff report was pressed into service to show that they were served through their real brother i. e. appellant No. 3. All the appellants were recorded to be duly served by the Trial Court. When Appellate Court decided the matter the record of the Trial Court was called for and thereafter the matter was dealt with

and finally decided by the impugned judgment and decree.

11. The bailiff report, panchanama, appearance pursis and vakalatnama were before the lower Appellate Court. Appellants had taken specific ground in their appeal memo. It was the foremost duty of the lower Appellate Court while exercising jurisdiction U/Sec. 96 of the Code of Civil Procedure to deal with all aspects of the matter. The grievance of the appellants before the lower Appellate Court was going to the root of the matter, which was totally ignored. It is only cursorily recorded in para No. 7 of the impugned judgment that summons were duly served upon the appellants and they failed to file written statement and matter proceeded without their written statement. The judgment referred by lowered Appellate Court does not spell out any consideration for the grounds raised regarding not filing of the written statement. It is abdication of judicial duty, which cannot be countenanced. I am of the considered view that the lower Appellate Court failed to exercise jurisdiction vested in it and it's judgment is unsustainable.

12. It is a suit for partition. The parties are litigating for quite some time. Even if matter is relegated to the lower Appellate Court only, the lower Appellate Court will have to deal with the question of valid service of summons as well as the order of no written statement by the Trial Court. To avoid further complications and to save the time, I find it fit to relegate the parties to the Trial Court by extending opportunity to them to

file pleadings and lead evidence within stipulated period.

13. At the same time I cannot be oblivious of the fact that appellants are in possession of the agricultural land gut No. 26 as well as house No. 26/1. The respondent is their cousin sister, who is litigating for her rights since the year 1999. I therefore propose to impose cost of Rs. 1,00,000/- (Rs. One Lakh only), which would be condition precedent.

14. For the reasons stated above, I answer first substantial questions of law in affirmative and second substantial question in negative. I therefore pass following order.

O R D E R

A. Second appeal is allowed partly.

B. Impugned judgment and decree dated 18.04.2018 passed by the lower Appellate Court in R.C.A. No. 08 of 2014 and judgment and decree dated 06.08.2011 passed by the Trial Court in R.C.S. No. 59 of 2009 are quashed and set aside.

C. Matter is relegated to the Civil Judge Junior Division, Deoni for trying it afresh from the stage of filing of written statement.

D. Parties shall appear before the Trial Court on 16.10.2025 and no further summons or notice shall be issued to them. It is made clear that appellants shall appear before the Trial Court

along with written statement and no further extension shall be granted.

E. The parties shall not seek unnecessary adjournments and the Trial Court shall decide the matter as early as possible and in any case within a period of five (05) months from the date of appearance of the parties i. e. 16.10.2025.

F. Appellants shall pay cost of Rs. 1,00,000/- (Rs. One Lakh only) to the respondent within a period of four (04) weeks from today, which is condition precedent. Failure of which shall entail termination of the present order and impugned judgments and decrees shall be restored without reference to this Court.

G. Needless to state that this Court has not expressed any opinion on the merits of the matter.

[SHAILESH P. BRAHME J.]

bsb/Sept. 25