



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

**SECOND APPEAL NO. 15 OF 2025
with
CIVIL APPLICATION NO. 343 OF 2025.**

Shyam s/o. Dattatray Rakhe
(died) Through legal heirs

1/1] Gangabai w/o. Shyam Rakhe,
Age 50 years, Occ. Household,
R/o. Lohgaon, Tq. Biloli,
Dist. Nanded.

1/2] Digambar S/o. Shyam Rakhe,
Age 31 years, Occ. Labour,
R/o. Lohgaon, Tq. Biloli,
Dist. Nanded.

1/3] Mangesh S/o. Shyam Rakhe,
Age 29 years, Occ. Labour,
R/o. Lohgaon, Tq. Biloli,
Dist. Nanded.

1/4] Durga Ganesh Kurude,
Age 27 years, Occ. Household,
R/o. Vasmata, Tq. And Dist. Hingoli,

2] Dilip S/o. Dattatray Rakhe
Age 52 years, Occ. Agriculture,
R/o. Lohgaon, Tq. Biloli,
Dist. Nanded.

3] Jayant S/o. Dattatray Rakhe,
Age 45 years, Occ. Agriculture,
R/o. Lohgaon, Tq. Biloli,
Dist. Nanded.

4] Transposed as Respondent No.6 as per leave granted
by this Court vide order dated 16.4.2025

.. APPELLANTS

VERSUS

- 1] Balaji s/o. Dattatrry Rakhe
Age 50 years, Occ. Agril,
At present Rajapur Tq. Dharmabad
Dist. Nanded.
- 2] Dattatray s/o Jalba Rakhe (Died)
- 3] Vijayalaxmi w/o. Pandurang Shinde,
Age 55 years, Occ. Household,
R/o. Tulsiram Nagar, Malgegaon Road,
Nanded.
- 4] Maltabai w/o. Gangaprasad Hurde,
Age 50 years, Occ. Household,
R/o. Somwar Peth Galli, Vasmat,
Dist. Hingoli.
- 5] Rajkumar s/o. Jayprakash Gangamwar,
Age 39 years, Occ. Business
R/o. Lohgaon, Tq. Biloli,
Dist. Nanded.
- 6] Janabai w/o. Dattatray Rakhe,
Age 70 years, Occ. Household
R/o. Lonegaon, Tq. Biloli,
Dist. Nanded. (original defendant No.5).

.. RESPONDENTS.

Mr. Sanjaykumar Chavan, Advocate for appellants.

CORAM :S.G. CHAPALGAONKAR, J.

DATE : 2ND MAY, 2025.

P.C. :-

1. The appellant/original defendant impugns the judgment and

decree dated 14.8.2024 passed by the District Judge, Biloli, in RCA No., 21 of 2019, thereby upholding the judgment and decree dated 30.3.2019 passed by Civil Judge (J.D.) Biloli, in RCS No. 86 of 2015 (Hereinafter parties are referred as per their original status in the suit)

2. The respondent/plaintiff filed suit seeking a decree of partition and separate possession in respect of suit properties contending that the land Gat Nos. 244, 245 and 235 situated at village Lohgaon, Taluka Biloli, are ancestral properties of plaintiff and defendant Nos. 1 to 5. Defendants refuted the entitlement of plaintiff to the share in suit properties. Therefore, he filed a suit seeking partition and separate possession and perpetual injunction.

3. Defendants caused their appearance and refuted plaintiff's claim. According to them, plaintiff after marriage started residing with family of wife and even adopted the surname of father in law. He relinquished his share in the joint family properties against the amount of Rs. 10,000/- paid to him at the time of marriage. As such, plaintiff has not right to claim share in the suit properties. In the light of pleadings of the parties, the learned trial court framed issued, recorded evidence of parties and concluded that plaintiff is entitled for partition and separate possession of 1/7th share in the suit properties. It is further held that sale deed executed by defendant No.3 in favour of defendant No.8 is not binding on plaintiff's rights. Defendants filed appeal vide R.C.A. NO. 21 of 2019, which came to be dismissed vide impugned judgment and order dated 14.8.2024.

4. Learned advocate for the appellant submits that plaintiff had gone in adoption to the family of wife. As such, he lost right in his

family. He had vested interest in adoptive father side and seized to have interest in the family of biological father and his properties. He heavily relies upon the evidence of mother i.e. Janabai, who states that plaintiff has relinquished his rights after receiving an amount of Rs. 10,000/-. The learned advocate further submits that surname of plaintiff s mentioned as Banewar in the 7 x 12 extract. Similarly, his sons are using that surname. The adoption of surname of that family itself is sufficient to prove that plaintiff relinquished his rights and relationship with family of his biological father. In support of his contention, he relies upon the judgment of the Supreme Court of India in the case of ***Chandrabhava vs. Saraswati reported in (2022) 20 SCC 199***, and judgment of this Court in the case of ***Nivrutti Pandurang Nale vs. Uttam Nale reported in (2025) SCC Online Bom. 1135***.

5. Having considered the submissions advanced, it is apposite to refer to the pleadings in written statement filed by defendants. Careful reading of contents of written statement would show that there is specific pleading that plaintiff has ben adopted in the Banewar family. It is contention in the written statement that plaintiff has no right to claim partition as he has gone as illatom-son-in-law with his father in law prior to 22 years. It is further contention while going to his house as illatom son-in-law, he has taken his share in the property of his father by accepting an amount of Rs. 10,000/- and relinquished his share in the suit land and house of his father.

6. The aforesaid pleading in written statement cannot be construed to mean that plaintiff is given in adoption to his father in law. The concept of “illatom son in law”, is different than the concept of “adoption”. The Hindu Adoption and Maintenance Act prescribes specific

requirements for valid adoption, wherein giving and taking is a pre-condition. In present case, from pleadings or evidence of the parties, nothing is discernible to show that plea of adoption was put into play on behalf of defendants. Defendants merely took a plea that plaintiff has relinquished his right in joint family properties as against receipt of cash amount of Rs. 10,000/- at the time of his marriage.

7. The trial court specifically framed issue, as to whether the plaintiff relinquished his share in the joint family property. It appears from evidence that the defendants have heavily relied on statement of defendant No.5 Janabai recorded before the trial court, wherein, she states that plaintiff received an amount of Rs. 10,000/- at the time of marriage and relinquished his share, however, during cross examination, she admits that she makes a statement about the relinquishment of share by plaintiff as per the say of his other sons and there is no evidence to support receipt of Rs. 10,000/- and consequential relinquishment of share. The appellate court, on re-appreciation of evidence, upheld the finding of trial court that theory of relinquishment of share by plaintiff is not proved. As such, both the courts have concurrently recorded a finding of fact in favour of the plaintiff that he is entitled for 1/7th share in the joint family properties and decreed the suit.

8. As far as reliance of the learned advocate for appellant on observations of the Supreme Court in the case of ***Chandrabhan***, it is observed that when there is misconstruction of document or wrong application of principles of law, in constructing a document, the substantial question of law arises. There cannot be two views about the law laid down by the Supreme Court of India. Any question of law having a material bearing on decision of the case, answer to which affects

rights of parties to the suit, will be a substantial question of law. Particularly, when it is not exempted by a specific provision of law and settled principles. Similarly, where a crystallized legal position having a force of binding precedent has been ignored, substantial question of law would arise, however, general rule is that High Court will not interfere with the finding of fact approved by the courts. In present case, the submissions advanced on behalf of appellant that the courts below ignored the adoption of plaintiff is baseless and does not find support in the pleadings of evidence. Courts have rightly appreciated the defence put forth in written statement to the effect that plaintiff relinquished his right in the joint family property and ultimately recorded a finding that such defence could not be established by leading cogent and reliable evidence. Therefore, the concurrent findings recorded by courts below do not require interference in second appeal. No substantial question of law arises for consideration in this second appeal. Second appeal sans merit, hence, dismissed. Pending civil application stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-