



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

949 SECOND APPEAL NO. 36 OF 2025

RAMCHANDRA S/O IRANNA PATIL

VERSUS

GANESH S/O HANMANTRAO PATIL AND ORS

.....

WITH

CIVIL APPLICATION NO. 970 OF 2025

IN SA/36/2025

.....

Advocate for the Appellant: Mr.Bilolikar Upendra Bapurao
Advocate for Respondent No.1 :Mr.Mukul S.Kulkarni h/f. Mr.A.B.Kharosekar

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 10th JULY 2025

PER COURT :

. Heard both sides.

2. This second appeal is emanating from concurrent findings of facts by which appellant/defendant suffered decree for partition, possession, declaration and injunction. Appellant is the original defendant No.2. Respondent Nos.1 and 2 are plaintiffs. The relationship *inter se* is not disputed.

3. The controversy between the parties pertains to 2 hectare and 80 R land of Gat No.253. Initially it was a joint family property of Manikrao and subject matter of R.C.S No.213 of 1979 which was filed for partition by Gangadhar. Manikrao happens to be a grandfather of Respondent No.1/Ganesh and father of Respondent No.3/Hanmantrao. R.C.S No.213 of 1979 was compromised

somewhere in 1979 and gat No.253 comprising of 10 hectare was allotted to the Respondent No.3/Hanmantrao. Thereafter Hanmantrao handed over possession of 2 hectare and 80 R to appellant who is his sister's husband. Appellant thereafter on 15.05.2009 sold the suit land to Respondent No.4/Gangadhar.

4. Present suit is filed challenging alienation dated 15.05.2009, partition, and declaration. Both the courts below recorded that handing over of possession of the suit land to appellant in the year 1989 was impermissible in law. Without taking recourse of permissible mode of transfer under the provisions of Transfer of property Act, no interest could pass on to appellant. Consequentially, alienation made by appellant in favour of Gangadhar on 15.05.2009 is also vitiated.

5. Learned counsel Mr. Bilolikar submits that Respondent No.3/Hanmantrao was exclusively owner of 10 hectare of land of gat No.253, immediately after compromise decree passed in 1979. When the suit land was allotted to appellant in the year 1989, Respondent No.1/Gamesh was not born. Hence, it was a property fallen in the share of Respondent No.3 as a separate property and he was entitled to alienation. Respondent No.1 was born in the year 1994. By that time the alienation had already taken place. It is contended that both the courts below did not take into account this legal aspect of the matter which gives rise to substantial questions of law.

6. Learned counsel for the respondents adverts my attention to the concurrent findings recorded by trial court and appellate court in respect of the handing over of possession of suit property by Respondent No.3/Hanmantrao to the appellant. It is contended that no tangible and permissible mode was undertaken to transfer the property. It is submitted that in concurrent finding of facts, there is no reason to interfere with.

7. Both the courts below have recorded concurrent findings of facts regarding alienation of the suit land in the year 1989 in favour of the appellant. No registered instrument is placed on record or relied upon by the appellant to show that said transfer was in accordance with Transfer of property act as well as Registration act. It can not be lost sight of that Ramchandra can not be treated to be either member of the joint family or co-parcener. No sooner than compromise decree was passed in 1979, joint family dissolved and partition by metes and bounds was effected. It can be said that appellant has some interest through his wife. Under these circumstances, if the suit property was alienated in 1989, then due procedure of law and the permissible mode prescribed under Transfer of property act or Registration act was required to be followed. I do not find that the findings recorded by both the courts below are perverse or illegal.

8. When the suit land was alienated in the year 1989,

Respondent No.1 was not born. Respondent No.3/Hanmantrao was holding the suit land as an absolute owner. He could have transferred the suit land to the appellant in accordance with law. Therefore, though there is substance in the submission of learned counsel Mr. Bilolikar, the position on merit does not change. Ultimately what is relevant is the manner in which property was transferred to the appellant.

9. Both the courts below have decreed the suit and awarded shares to the parties. In the absence of any pleadings and evidence challenging the entitlement of the sharers or tenability of the suit, no interference is necessary. Both the courts below have taken plausible view.

10. In that view of the matter, I find no substance in the appeal much less any substantial question of law.

11. Second appeal is dismissed.

12. Civil application also stands disposed of.

[SHAILESH P. BRAHME, J.]

vsj..