



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

**SECOND APPEAL NO.296 OF 2023
WITH
CIVIL APPLICATION NO.1000 OF 2024**

1. Shivaji S/o. Digambar Lolge,
Age: 56 years, Occup. Agriculture,
R/o. Takali (ku) Tq. and District Parbhani
Deceased through L.Rs.
- 1/1. Vaijanth S/o Shivaji Lolge
Age: 38 years, Occu.: Agriculture,
R/o. Takali (ku) Tq. and District Parbhani
- 1/2. Lakhan S/o Shivaji Lolge
Age: 34 years, Occu.: Agriculture,
R/o. Takali (ku) Tq. and District Parbhani
- 1/3. Kamal S/o Shivaji Lolge
Age: 38 years, Occu.: Agriculture,
R/o. Takali (ku) Tq. and District Parbhani
2. Tanaji S/o. Digambar Lolge,
Age: 54 years, Occu.: Agriculture,
R/o. Takali (ku) Tq. and District Parbhani
3. Govind S/o. Digambar Lolge
Age: 51 years, Occu.: Agriculture,
R/o. Takali (ku) Tq. and District Parbhani
Deceased through L.Rs.
- 3/1. Usha W/o. Govind Lolge,
Age: 49 years, Occu.: Household,
R/o. Juna Pedgaon Road, Parbhani
Tq. and District Parbhani
- 3/4. Priyanka d/o Govind Lolge,
Age: 26 years, Occu.: Education,
R/o. Juna Pedgaon Road, Parbhani
Tq. and District Parbhani
- 3/3. Pravin S/o. Govind Lolge,
Age: 23 years, Occu.: Education,

R/o. Juna Pedgaon Road, Parbhani
Tq. and District Parbhani

3/4. Pratiksha W/o Sarang Shahane,
Age: 24 years, Occu.: Household,
R/o. Juna Pedgaon Road, Parbhani
Tq. and District Parbhani

4. Kishor S/o Tanaji Lolge,
Age: 34 years, Occu.: Agriculture,
R/o. Takali (ku) Tq. and District Parbhani ..Appellants
(Original Defendants)

Versus

1. Shobha @ Suman w/o Subhash Udavant,
Age: 53 years, Occup. Household,
R/o: Vetali Galli, Gangakhed,
Ta. Gangakhed, District Parbhani.

2. Meena W/o. Kishor Dahale,
Age: 48 years, Occup. Household,
R/o: Bhajan Galli Parbhani, Tq. and District
Parbhani. ..Respondents
(Ori. Plaintiffs)

...
Mr. E. E. Sawant h/f Mr. M. P. Kale, Advocate for Appellants.
Mr. S. K. Chavan, Advocate for Respondent Nos.1 and 2.
...

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th APRIL, 2025.

ORDER:-

1. The appellants/original defendant nos.1 to 4 impugn judgment and decree dated 31.01.2023 passed by District Judge-1, Parbhani in Regular Civil Appeal No.7/2018, thereby upholding judgment and decree dated 12.12.2017 passed by Civil Judge, Senior Division, Parbhani in Special Civil Suit No.2/2017.

(Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The fact giving rise to present Second Appeal can be summarized as under:

The respondents/plaintiffs instituted suit for partition and separate possession to the extent of 1/5th share in suit property i.e. Gut No.175 situated at village Takli (Ku), District Parbhani, so also seek declaration that sale deed dated 20.05.2015 executed by defendant no.3 in favour of defendant no.4 is not binding on their rights.

The appellants/original defendants resisted claim by filing written statement by taking exception to all the averments in plaint. The Trial Court framed issues, recorded evidence of parties and finally decreed suit of plaintiffs holding that they are entitled for partition and possession of 1/5th share in suit property and also declared that sale deed dated 20.05.2015 is not binding on their rights. The defendants filed Appeal, which came to be dismissed upholding decree as passed by Trial Court. Hence, this Second Appeal.

3. Mr. Sawant, learned Advocate appearing for appellants submits that Trial Court as well as Appellate Court failed to frame appropriate issues/points for consideration. He would submit that

in suit for partition and separate possession, issue as to the nature of property either it is joint family property or self-acquired property needs to be framed. However, Courts below ignored aforesaid legal position. Mr. Sawant would further submit that although plaintiffs have sought declaration that sale deed dated 20.05.2015 executed by defendant no.3 in favour of defendant no.4 is not binding, no prayer for cancellation or setting aside sale deed has been incorporated. The suit was not properly valued and Court Fees was not paid. All these issues goes to the root of matter. However, there is no whisper in judgment of Courts below on these material aspects. Mr. Sawant would further submit that infact plaintiffs had relinquished their rights in suit property after death of father. Later on, false suit has been filed.

4. Per contra, Mr. Chavan, learned Advocate appearing for respondent nos.1 and 2 (original plaintiffs) supports impugned judgment and decree contending that all contentions raised by appellants are elaborately considered by Courts below and concurrent findings of facts have been recorded, which requires no interference in Second Appeal. According to him, no substantial question of law arises for consideration. Hence, Second Appeal deserves to be rejected at threshold.

5. Having considered submissions advanced, it can be observed that one Digambar Lolge was owner of suit property. The plaintiffs

and defendant nos.1 to 3 are his legal representatives. The defendant no.4 is purchaser of suit property from defendant no.1. Digambar Lolge expired on 08.10.2007. The name of plaintiffs, defendant nos.1 to 3 and their mother Vimalbai was recorded as successors of Digambar vide Mutation Entry No.4337 dated 18.04.2009. Later on, Vimalbai expired on 10.05.2013. There is no dispute as to aforesaid factual aspects.

6. In this background, whether suit property was self-acquired property of Digambar Lolge or it was ancestral property would not be germane in present suit for partition, particularly in light of 2005 Amendment in Hindu Succession Act, which bestowed status of coparcener upon daughters in Hindu family. Admittedly, plaintiffs being daughters and defendants being sons are coparceners. In this background, Trial Court framed issue as to whether plaintiffs have share in suit property and recorded findings thereon. In that view of matter, contentions raised by Mr. Sawant that in present suit, issue as to nature of property is necessary cannot be countenanced. Therefore, non-framing of issues or points for consideration on aforesaid aspects would not be fatal to the case of plaintiffs.

7. Mr. Sawant would further submit that plaintiffs have not prayed for setting aside sale deed or cancellation of sale deed or not paid Court Fees.

8. The aforesaid contentions also does not hold water for simple reason that plaintiffs have instituted suit claiming relief of partition and separate possession in joint family property. The alienation made by defendant no.1 beyond his share without consent of plaintiffs can be simply ignored by them. Such alienation would be effective only to the extent of share of defendant no.1. It would not bind other co-sharers. The plaintiffs have, therefore, rightly sought limited declaration that sale deed dated 20.05.2015 executed by defendant no.3 in favour of defendant no.4 is not binding on their rights.

9. Mr. Sawant would further endeavour to contend that infact there was relinquishment of rights by plaintiffs in favour of defendants.

10. Pertinently, aforesaid contentions are not part of pleadings in written statement. No particulars of such relinquishment are brought on record. No instrument or documents in support of such contention is brought on record of Court. In this background, contention of Mr. Sawant cannot be accepted. The Trial Court as well as Appellate Court elaborately considered all aforesaid aspects and recorded appropriate findings, which are in tune with prevailing legal position. Hence, no substantial question of law

arises for consideration in this Second Appeal. Hence, Second Appeal stands dismissed.

11. In view of dismissal of Second Appeal, pending Civil Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025