



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

**SECOND APPEAL NO. 453 OF 2024**

Pradip s/o Bhausahab Deshmukh & Ors

VERSUS

Pratap s/o Bhausahab Deshmukh

Mr. Mayur Deokate, Advocate for appellants

Mr. A. S. Shelke, Advocate for respondent

**CORAM : R. M. JOSHI, J.**

**DATE : 21<sup>st</sup> January, 2025**

**PER COURT :-**

1. This appeal is preferred under Section 100 of the Code of Civil Procedure against concurrent findings recorded by the Trial Court and the First Appellate Court decreeing Regular Civil Suit No. 36/2009 and its confirmation in Regular Civil Appeal No. 64/2021, holding that the gift executed by Bhausahab in favour of defendants Prashant and Shrikant dated 08.03.2004 is not valid and, therefore, canceled. A further, direction was issued for handing over of the possession of the suit land to the plaintiff.

2. Plaintiff is the son of defendant Bhausahab (now deceased). It is claimed that joint family properties various block Nos. specifically mentioned with area of total 62 Acre was partitioned amongst the plaintiff, his brothers and Bhausahab. Bhausahab was allotted 22 acres land in this partition. However property block No. 153 remained in name

of Bhausahab for his livelihood. It is claimed that the writing in this regard issued by plaintiff and Satyakumar was in custody of Bhausahab i.e., father of plaintiff. He allegedly added some contents behind back of plaintiff and his brother. It is claimed by plaintiff that suit land was allotted to plaintiff but it was kept in the name of Bhausahab. On death of Bhausahab on 16.12.2009, the said property is claimed to have been in possession of plaintiff. Defendant Pratap filed suit bearing No. 77/2014, for perpetual injunction against plaintiff. On the basis of interim relief of injunction, plaintiff is dispossessed from suit property. It is claimed by plaintiff that Bhausahab had no right to execute gift deed in favour of defendants in respect of suit land. It is further claimed that bogus gift deed was obtained by the concerned defendant. On the basis of these averments, the cancellation of gift deed is sought. The plaint was amended with the averments that defendant Nos. 3 and 4 filed another suit against the plaintiff herein and by taking advantage of injunction granted therein, they dispossessed the plaintiff from suit property. Consequently, the suit for decree of possession is also sought.

3. Defendants filed written statement vide Exhibit 16. The relationship between the parties is admitted. It is however denied that there was oral partition in respect of 62 Acres land in 1984. It is claimed that plaintiff has no concern with suit property i.e., Gut No. 153 situated

at village Nipani Pimpalgao, Tq. Ghansawangi, Dist. Jalna. Defendants refuted the allegations made by the plaintiff. As far as Gut No. 153 i.e., suit property is concerned, it is claimed that the said property is not allotted to the plaintiff. Bhausahab claimed to have right to gift the same to defendant Nos. 3 and 4. It is also claimed that on the basis of registered gift deed, the suit land was gifted to the defendants and on their behalf, Meenabai had accepted the said gift.

4. On framing of issues, parties led evidence before the Trial Court. Trial Court decreed the suit. First Appellate Court confirmed the said judgment and decree passed by the Trial Court.

5. Learned counsel for contesting defendants/appellant herein submits that the Trial Court as well as First Appellate Court have committed error in appreciating the evidence on record. According to him, memorandum executed in 1984 is sufficient to indicate that there was a partition between sons and father i.e., defendant Bhausahab. He argued that it specifically mentions that parties were agreeable to retain the properties which stood in their respective name.

6. This contention is controverted by the learned counsel for the plaintiff by pointing out that Bhausahab was not signatory to the said document. According to him, the said alleged writing is only in respect of

the property which stood in the name of plaintiff and his brother and said document came to be executed for limited purpose. He has pointed out that the said document is not accepted by both Courts below for the reason that there are additions and that there is no evidence to indicate that the said additions were not done subsequently but were incorporated at time of its execution.

7. There was specific issue raised with regard to the genuineness of the said document. As observed by both Courts below the document had additions and no evidence is there to hold that they form part of original document. Pertinently, contesting defendant did not enter into witness box however they examined witnesses to the said document dated 28.05.1984. From the admission given in the cross examination of these witnesses, Trial Court has held that the said document is doubtful. The said findings of fact is confirmed by the First Appellate Court.

8. Even if the contention of the learned counsel for the appellant is accepted that the interpretation of the document involves a substantial question of law. The document for the purpose of interpretation must be held to be genuine. The question of interpretation of a document would come later on. Admittedly, this document was not executed by Bhausahab and it was executed only by plaintiff and his brother Satyakumar wherein it is also stated that

१) आमच्या नावावर ज्या ज्या जमिनी आहेत त्या त्या आम्हास मान्य आहेत.

It is pertinent to note that in this document there is reference about other properties except suit property. Inclusion there of, is apparent addition to the said document. Thus, the issue before this Court is not about the correct interpretation of the document but its genuineness. Both Courts below after appreciating evidence on record, held that the said document is doubtful. In exercise of jurisdiction under Section 100 of the Code of Civil Procedure, this Court cannot and is not inclined to cause interference in the said finding of facts, for want of any perversity therein.

9. In view of above discussion, no substantial question of law is involved this appeal. Therefore, appeal stands dismissed.

**(R. M. JOSHI, J.)**

bsj