

varsha

Digitally
signed by
VARSHA
VIJAY
RAJGURU
Date:
2025.01.29
16:51:52
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 239 OF 2018
WITH
CIVIL APPLICATION NO. 561 OF 2018
IN
SECOND APPEAL NO. 239 OF 2018**

Prabha Narayan Shedage alias Sunita ... Appellant/Applicant
Shivram Banbe

vs.

Divakar Vishnu Shedage ... Respondent

Mr. Aniesh Jadhav a/w. Mr. Nikhil Adkine a/w. Mr. Vaibhav Sugdare
for Appellant.

CORAM : GAURI GODSE, J.

DATED : 14th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the heirs and legal representatives of defendant no. 24 to challenge the concurrent judgments and decrees passed in the suit for partition. The partition was prayed with respect to various properties. Based on the rival pleadings, the partition suit was partly decreed. The heirs and legal representatives of deceased defendant no. 24, were aggrieved by the declaration granted by the trial court

that the properties at Serial Nos. 21 and 22 are the separate properties of Narayan and Vishnu. Appellants are heirs and legal representatives of Narayan i.e. defendant no. 24.

2. Learned counsel for the appellants submits that though the gift deed, was executed only in the name of Narayan, both the courts have erroneously held that by a gift deed the properties at Serial Nos. 21 and 22 were gifted to Narayan and Vishnu. Learned counsel for the appellants submits that the clause in the gift deed interpreted by the first appellate court in paragraph no. 15 of the judgment is erroneous and perverse as the said interpretation is contrary to the gift deed. He submits that once it is admitted that the gift deed was only in the name of Narayan, then Vishnu would not get any title based on the gift deed. He thus, submits that the second appeal would require consideration on the point that interpretation of the gift deed is contrary to the terms and conditions of the gift deed which was executed only in the name of Narayan.

3. To consider the submissions made on behalf of the appellant, I have perused the reasons recorded by both the courts. Both the courts have concurrently held the suit properties at serial nos. 21 and 22 were separate properties of Narayan and Vishnu and those properties do not belong to the joint family.

4. In view of the findings that the properties at Serial Nos. 21 and 22 were the separate properties of Narayan and Vishnu, the prayer for partition in respect of the said properties was refused. In the suit for partition and separate possession, defendant no.24 opposed the partition of the said properties on the ground that there was a gift deed executed by the original owner in the name of Narayan and thus, the said properties did not belong to a joint family. There was no counter claim filed by defendant no. 24 for any declaration that he was the absolute owner of the said properties.

5. The trial court while recording the findings on the properties at Serial nos. 21 and 22, held in paragraph 41 of the judgment that the properties at Serial Nos. 21 and 22 were admittedly donated to Narayan and Vishnu by executing a registered gift deed. Based on the documentary and oral evidence, the trial court granted a declaration that the properties at Serial Nos. 21 and 22 were separate properties of Narayan and Vishnu.

6. Being aggrieved by the trial court's decree, the first appeal was preferred by the plaintiff. Cross objections was filed on behalf of defendant no. 24, to claim exclusive ownership of the said properties by Narayan based on the gift deed. The first appellate court by re-examining the evidence on record confirmed the trial

court's findings that the said properties belong to Narayan and Vishnu. The first appellate court has reproduced the relevant clause in the gift deed which records that the gift deed was executed for Narayan and Vitthal. Based on the evidence on record and the terms and conditions of the gift deed, the first appellate court confirmed the findings recorded by the trial court that the said properties belong to Narayan and Vishnu both.

7. A perusal of the cross objections does not indicate that the findings recorded by the trial court in paragraph 41, regarding admission about the properties donated to Vitthal and Narayan was challenged. Both the courts have examined the documentary as well as oral evidence on record for declaring that the said properties were separate properties of Narayan and Vitthal. I do not find any illegality or perversity in the reasons recorded by both the courts in granting the declaration.

8. The second appeal does not raise any substantial question of law. Hence, second appeal is dismissed. In view of dismissal of the second appeal, the pending civil application is disposed of as infructuous.

(GAURI GODSE, J.)