

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.365 OF 2024  
WITH  
INTERIM APPLICATION NO.17183 OF 2023  
IN  
SECOND APPEAL NO.365 OF 2024

VAIBHAV  
RAMESH  
JADHAV  
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VAIBHAV RAMESH  
JADHAV  
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1 Ningubai Govind Yallurkar (Deceased)  
Through Legal Heirs,

1.1 Renuka Shivaji Patil

Age.-45 years, Occ. Agriculture,  
R/o.-Mandedurg, Tal.-Chandgad,  
Dist.-Kolhapur

1.2 Santu Govind Yallurkar

Age.-50 years, Occu. Agriculture,  
R/o.-Mandedurg, Tal.-Chandgad,  
Dist.-Kolhapur

... Appellants

V/s.

1 Krishna Bharmana Dasake @ Daska

Age-79 years, Occu.:- Agriculture,  
R/o.-Mandedurg, Tal.-Chandgad,  
Dist.-Kolhapur

2 Kamalabai Jotiba Chavan (Deceased)  
Through Legal Heirs,

2.1 Bhavaku Jotiba Chavan

Age.-65 years, Occ. Agriculture,

R/o.-Basarge, Tal.-Chandgad,  
District.-Kolhapur

2.2 Nandu @ Nandkumar Jotiba Chavan

Age.-63, Occ. Agriculture,  
R/o.-Basarge, Tal.-Chandgad,  
District.-Kolhapur

2.3 Tanaji Jotiba Chavan

Age.-61 years, Occ. Agriculture,  
R/o.-Basarge, Tal.-Chandgad,  
District.-Kolhapur

2.4 Sunita Mahadev Bondre

Age.-61 years, Occ. Agriculture,  
R/o.-Dundage, Tal.-Chandgad,  
Dist.-Kolhapur.

2.5 Mallava Hariba Patil

Age.-57 years, Occ. Agriculture,  
R/o.-Basarge, Tal.-Chandgad,  
Dist.-Kolhapur

2.6 Nirmala @ Muktabai Narasu Patil

Age.-55 years, Occ. Agriculture,  
R/o.-Jattewadi, Tal.-Chandgad,  
Dist.-Kolhapur

... Respondents

Mr. Naveen B. Khaire for the appellants (through V.C.).

**CORAM : S. G. CHAPALGAONKAR, J.**

**DATED : NOVEMBER 3, 2025**

**JUDGMENT:**

1. Present Second Appeal takes exception to judgment and decree dated 23rd January 2023 passed by learned District Judge, Gadhinglaj in Regular Civil Appeal No.70 of 2009, thereby confirming decree dated 19th June 2009 passed by learned Civil Judge, Junior Division, Chandgad in Regular Civil Suit No.138 of 1995 with certain modifications

2. Appellants are original defendant Nos.1 and 2. Respondent No.1 is original plaintiff. He instituted Regular Civil Suit No.138 of 1995 before learned Civil Judge, Junior Division, Chandgad, seeking declaration of ownership in respect of half share in land Gat No.622 situated at Village Mandedurg, Taluka Chandgad, and also claimed partition, separate possession, and perpetual injunction. It is contention of plaintiff that Bhagubai Santu Gavade was original owner of suit property. Plaintiff purchased half share under registered sale deed dated 28th April 1964, while remaining half share was purchased by defendant No.3. Plaintiff was put in possession of his half share of joint property. Defendant Nos.1 and 2, taking disadvantage of illegal mutation entries, started

disturbing plaintiff's possession. Hence, plaintiff was required to file suit for declaration, partition, and injunction.

3. Defendants contend that Bhagubai executed a gift deed dated 28th December 1968 in favour of defendant No.1 in respect of suit property. Name of defendant No.1 was entered in revenue record on basis of that gift deed. She is in possession of suit property. Plaintiff's claim regarding execution of sale deed is denied. Trial Court framed issues based on pleadings of parties and recorded evidence.

4. The Trial Court concluded that plaintiff is absolute owner of one half share in suit property by virtue of sale deed dated 28th April 1964 executed by Bhagubai. However, rejected plaintiff's contention on point of physical possession, consequently eventually refused to grant relief of perpetual or mandatory injunction.

5. Aggrieved thereby, plaintiff filed Regular Civil Appeal No.70 of 2009 before learned District Judge, Gadhinglaj, who allowed the appeal and decreed plaintiff's suit in entirety, perpetually restraining defendants from obstructing plaintiff's possession and directing them to remove construction admeasuring 18 x 30 feet

made over suit property and handover one half share in suit property to plaintiff by way of partition. Aggrieved thereby, the defendants filed present second appeal assailing judgment and decree as passed by Appellate Court.

6. Mr. Naveen Khaire, learned advocate appearing for appellants, submits that defendant No.1 is daughter of original owner Bhagubai. She executed a gift deed in favour of defendant No.1 on 28th December 1968. The name of defendant No.1 was mutated in record of rights and she continued in possession of suit property. Plaintiff has raised a false claim based on the so-called sale deed of 1964. He further submits that the revenue records produced below Exhibits 140 to 149 clearly depict that defendant No.1 was in possession of property. There was no challenge to mutation record; hence, a presumption arises in favour of defendant. He further relies upon the observations of the learned Trial Court holding that defendant is in possession of the suit property. According to him, the plaintiff's suit seeking declaration of ownership is barred by limitation.

7. Having considered the submissions advanced by learned advocate appearing for the appellants, it can be observed that both

courts have concurrently held that plaintiff purchased the suit property from the original owner, Bhagubai, under a registered sale deed dated 28th April 1964. Consequently, the title of the suit property was transferred to plaintiff to the extent of one-half share in the joint property. Although defendant No.1 claims her right on the basis of a registered gift deed executed on 28th December 1968, it would not affect plaintiff's title. Even otherwise, once Bhagubai had transferred the title in favour of plaintiff under the registered sale deed of 1964, the gift deed of 1968 by Bhagubai in respect of the same property would be inconsequential. Pertinently, learned Trial Court had accepted plaintiff's claim of ownership and passed a decree of declaration to that effect. It was not challenged by the defendant in appeal before the District Judge. Therefore, the decree to the extent of declaration of ownership in favour of plaintiff has already attained finality.

8. Plaintiff had filed an appeal before the District Judge, aggrieved by refusal of the decree for injunction and partition. The Appellate Court observed that revenue record shows entry of defendant's name on the basis of the gift deed, but it is an invalid document. Further, the contents of the sale deed executed by

Bhagubai in favour of plaintiff clearly indicate that plaintiff was put in joint possession. In this backdrop, the claim of the defendant that she was put in possession of the suit property in the year 1968 cannot be accepted. Learned District Judge has further observed that the 7/12 extracts at Exhibits 140 to 142 show the name of the plaintiff in the “other rights” column on the basis of the sale deed. In fact, the plaintiff had acquired title under the registered sale deed, and his name ought to have been recorded as owner. The plaintiff, being the owner of the suit property, his possession over the suit property is natural and acceptable. Record indicates that except for the mutation entry in favour of the defendant, on the basis of the inconsequential gift deed, there is nothing to show that defendant No.1 was put into possession after handing over possession to plaintiff under the registered sale deed. Nothing is brought to the notice of this Court to show that the defendant was in actual possession of the suit property after execution of the sale deed by Bhagubai in favour of the plaintiff.

9. Learned advocate appearing for the appellants contends that the suit of the plaintiff is barred by limitation. Perusal of the plaint shows that the plaintiff filed the suit on the basis of the cause of

action that arose in the month of October 1995. The suit was instituted on 20th November 1995. The limitation for the relief of declaration is prescribed under Article 58 of the Limitation Act. In the present case, the suit was filed within a period of three years from the date of the cause of action. No limitation is prescribed for the relief of partition and injunction. In this background, the learned advocate appearing for the appellants could not demonstrate how the suit is barred by limitation. Pertinently, the learned Trial Court had framed Issue No.6 as to limitation and held that suit is within limitation. The aforesaid finding was not challenged by defendants in appeal. The Appellate Court granted relief of partition, separate possession, and mandatory injunction, in addition to relief of declaration granted by Trial Court in favour of plaintiff. In that view of the matter, there is no substance in contention of appellants that the suit is barred by limitation.

**10.** In result, no substantial question of law arises for consideration in this appeal, second appeal stands rejected.

**11.** The interim application stands disposed of.

**(S. G. CHAPALGAONKAR, J.)**