

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
SECOND APPEAL NO.695 OF 2018**

1. Shri. Baba Dhondiba Shinde (Dukare)
(Since deceased through L.R.s)

1A. Smt. Rukmini Baba Shinde (Dukare),
Age: 76 yrs., Occ: Household,
R/o. At Post: Kasegaon,
Tal. Pandharpur, Dist. Solapur.

1B. Smt. Jayashri Ramchandra Nagne,
Age: 45 yrs., Occ: Household,
R/o At Post: Siddhewadi,
Tal. Pandharpur, Dist. Solapur.

2. Shri. Bharat Baba Shinde,
Age: 47 yrs., Occ: Agriculture,

3. Navanath Baba Shinde,
Age: 45 yrs., Occu: Agriculture,
R/o. Kasegaon, Tal. Pandharpur,
Dist. Solapur.

..Appellants
(Ori. Defendants)

Versus

Sou. Jayashri Shivaji Shinde (Dukare)
Age: 52 yrs., Occu: Household,
R/o Kasegaon, Tal. Pandharpur,
Dist. Solapur.

..Respondent
(Ori. Plaintiff)

...

Mr. Vishwanath Talkute a/w Mr. Pratik Bhojane a/w Ms. Sampada Patil
a/w Mr. Mahesh Bhosale, Advocate for Appellants.
Mr. Ajay A. Joshi, Advocate for Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 22nd SEPTEMBER, 2025.

PRONOUNCED ON : 25th SEPTEMBER, 2025.

FINAL ORDER:-

1. The present Second Appeal takes exception to judgment and decree dated 04.05.2017 passed by learned District Judge, Pandharpur

in Regular Civil Appeal No.19/2011, thereby upholding judgment and decree dated 08.11.2010 passed by learned Civil Judge Junior Division, Pandharpur in Regular Civil Suit No.394/2002.

2. The respondent instituted Regular Civil Suit No.394/2002 seeking relief of perpetual injunction against appellants. She contends that Dhondiba Hariba Shinde was owner of suit land. He effected partition of suit property between himself and his sons namely Baba and Shivaji in year 1995. The suit lands were allotted to Dhondiba's share. He expired on 26.07.2002 and transferred ownership in her favour. Accordingly, she acquired ownership and possession. The appellants are disturbing her possession. Hence, she filed suit.

3. The appellants contested suit by filing written statement and took plea that at the time of partition between Dhondiba and his sons, it was agreed that share allotted to Dhondiba will be equally divided between his two sons. Taking advantage of illness of Dhondiba, sale deed dated 29.05.2002 got executed by respondent. According to appellants, they are in possession and cultivation of suit land to the extent of half portion.

4. The Trial Court framed issues based on pleading of parties, recorded evidence and accepted that respondent become owner of suit land under sale deed dated 29.05.2002 executed by Dhondiba and she is in possession of suit land. The contention of appellants that

defendant got executed sale deed by taking advantage of old age of Dhondiba is negatived. The appellants filed First Appeal before District Court, which came to be dismissed upholding judgment and decree as passed by Trial Court.

5. Mr. Vishwanath Talkute, learned Advocate appearing for appellants would submit that both Courts erroneously put burden upon appellants to prove that sale deed dated 29.05.2002 was executed with undue influence specially when respondent was in position of active confidence over Dhondiba. He would submit that Dhondiba died on 26.07.2002, whereas sale deed suffers from vice of perversity. He would invite attention of this Court to Section 111 of Indian Evidence Act to contend that although transaction may not *void ifso facto*, burden of establishing its perfect fairness, adequacy and equity would cast upon person in whom confidence has been reposed. He would, therefore, urge that respondent and her husband Shivaji had confidential or fiduciary relations with Dhondiba and took advantage over appellants under pretext of sale deed. It was burden of respondent that transaction was fair and honest. In support of his contentions he relies upon exposition of law by Supreme Court in case of ***Krishna Mohan Kul Alias Nani Charan Kul and Another Vs. Pratima Maity and Others***¹.

¹ (2004) 9 SCC 468.

6. Per contra, Mr. Ajay Joshi, learned Advocate appearing for respondent would submit that respondent had absolute title in suit property as per partition of year 1995. Dhondiba alienated his share to respondent under registered sale deed and eventually, title and possession in suit property vested in respondent. Both Courts have concurrently held that respondent proved execution of sale deed in her favour and title is validly passed to her. The appellants failed to establish their case about agreement between parties that after death of Dhondiba suit property to be divided between appellant and his brother Shivaji.

7. Having considered submissions advanced and reasoning as adopted by Courts below, it can be observed that suit land was originally owned by Dhondiba. In year 1995, there was partition between Dhondiba and his two sons i.e. Shivaji and Baba. The suit land was allotted to share of Dhondiba. It is not in dispute that Dhondiba transferred suit property in name of respondent vide registered sale deed dated 29.05.2002. Eventually, mutation entries were taken, which specifically shows that respondent was in possession of suit property since date of sale deed.

8. Although appellants took plea that sale deed was obtained taking disadvantage of age of Dhondiba, no convincing evidence is brought on record in this regard. Pertinently, respondent had instituted suit only for relief of perpetual injunction in which validity of sale deed dated

29.05.2002 was not challenged. Both Courts have concurrently held that respondent is in possession of suit property in deference to sale deed. In that view of matter, decree of perpetual injunction passed against appellants does not call interference in Second Appeal.

9. In result, Second Appeal sans substantial question of law, hence, stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2025