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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 367 OF 2025
WITH
INTERIM APPLICATION NO.8812 OF 2025**

Baban Sadashiv Sasar and Ors.Appellants
V/s
Nivrutti Sabaji Sasar & Ors.Respondents

**WITH
SECOND APPEAL NO. 374 OF 2025
WITH
INTERIM APPLICATION NO.2015 OF 2025**

Baban Sadashiv Sasar and Ors.Appellants
V/s
Vitthal Sabaji Sasar (since deceased through LRS)
and Ors.Respondents

Appearance in SA/367/2025.

Mr. Sudhir Sadavarte, Advocate for Appellants.
Mr. Shailendra S. Kanetkar, Advocate for Respondent No.7.
Mr. Vivek V. Salunke, Advocate for Respondent No. 8.

Appearance in SA/374/2025.

Mr. Sudhir Sadavarte, Advocate for Appellants.
Mr. Pradeep Thorat a/w. Mr. Rahul Sarda, Mr. Avdhoot Prabhu i/b. Lex
Services, Advocate for Respondent Nos. 1 To 3.
Mr. Ajay Singh a/w. Mr. Rahul Sarda i/b Lex Services, Advocates for
Respondent Nos. 5 & 6.
Mr. Shailendra S. Kanetkar, Advocate for Respondent No. 7.
Mr. Vivek Salunke, Advocate for Respondent No. 8

CORAM : M. M. SATHAYE, J.

DATED : 10th JULY 2025

JUDGMENT:

1. Heard learned counsel for the parties.
2. Second Appeal No.374 of 2025 is filed challenging the Judgment and Decree dated 04.12.2024 passed by District Judge-2, Pune in Regular Civil Appeal No.642 of 2011. Second Appeal No.367 of 2025 is filed challenging the Judgment and Decree dated 04.12.2024 passed by District Judge-2, Pune in Regular Civil Appeal No.707 of 2011. By the said impugned Judgments and Decrees, appeals are allowed and common Judgment and Decree dated 30.09.2011 passed in Regular Civil Suit No.1696 of 2005 passed Joint Civil Judge, Senior Division, Pune, is set aside.
3. Present Appellants are original Plaintiffs and the Respondents are original Defendants.

CASE

4. The said suit was filed for partition and separate possession, declaration and permanent injunction. It is the case of the Appellants that the suit properties are ancestral properties, which were in possession of one Sabaji Dhondiba Sasar and Sadashiv Dhondiba Sasar. The Appellants are claiming through the branch of Sadashiv and Respondents are from the branch of Sabaji. That partition has not been effected in the family. Dhondiba was the father of Sabaji and Sadashiv. Dhondiba died in November 1918. At that time, Sabaji and Sadashiv were minors and therefore, their uncle Nana was acting as their guardian. Sabaji was elder brother and when he became major his name was mutated in the revenue record. Name of Sadashiv was not entered in the revenue record. On 04.06.1927, Nana sold part of suit properties to Khandu Balaji Jadhav by a

registered sale deed. Khandu Balaji Jadhav is an outsider and not part of this family. It is contended that without obtaining the consent of Sabaji and Sadashiv, who were minors, Nana has sold part of the suit properties to Khandu Balaji Jadhav. It is contended that this was a sham and bogus sale deed and Sabaji and Sadashiv continued in possession even after execution of registered sale deed. Five years after first sale deed, one Ganpat Kanhu Chandere, again an outsider, purchased the said properties from Khandu Balaji Jadhav by registered sale deed dated 09.06.1932. It is contended that even then, the purchasers never became owners and Sabaji and Sadashiv continued to occupy the said properties.

5. Incidentally, Ganpat Kanhu Chandere gifted those properties to his daughter Gaoobai and Dagdabai by gift-deeds dated 06.01.1939, out of whom Dagdabai happened to be wife of Sabaji. It is contended that even after execution of gift-deed, Dagdabai never became owner and the properties remained in possession and Sabaji and Sadashiv. It is further contended that though the suit properties were mutated in the name of Sabaji alone, both Sabaji and Sadashiv were cultivating the properties jointly and took income therefrom jointly. It is contended that there was no dispute between Sabaji and Sadashiv. Then it is contended that the Appellants' mother Housabai and Defendants' mother Prabhabai were real sister and therefore, the question of partition did not arise. On these contentions, the suit is filed in 2005 seeking partition, separate possession and injunction not to sell and a prayer was added in 2009 challenging registered sale deeds dated 04.06.1927 & 09.06.1932 and gift-deed dated 06.01.1939, seeking declaration that the said documents are not binding on the Appellants' share and they be canceled. It is the case of the Appellants that these documents are sham and bogus and not binding on the

Appellants.

6. The Respondents filed written statement refuting the allegations. It is contended that Sabaji and Sadashiv were residing separately since 1940 and there are long standing mutation/revenue entries (unchallenged) showing the Respondents in possession of the suit properties. It is further contended that since part of the suit properties were sold by registered sale deed to a third party, which in turn has sold them further to another third party who has gifted the same to his daughters Gaoogai and Dagdabai, out of whom Dagdabai incidentally happens to be first wife of the Sabaji, the properties sold/gifted under the said documents cannot be considered as joint family properties. The joint cultivation and joint income are denied. After the death of Dagadabai, suit properties received from father Ganpati has been inherited by her husband/children and can not form part of joint family property. It is contended that after death of Sabaji, partition has been effected between sons and daughters and they have also sold part of the suit properties. Half share, as claimed, is disputed. It was contended that the suit is barred by limitation and Sadashiv never challenged the registered documents of 1927, 1932 & 1939 during his life time and therefore, the suit is liable to be dismissed.

7. The Trial Court by its Judgment and Decree, declared that the Appellants have 1/2 share in the suit properties who are entitled to separate possession, and also declared that the sale deeds of the year 1927 & 1932 and gift deed of 1939 are not binding on the Appellants to the extent of their share. Injunction was also granted against the Respondents from creating third party interest.

8. The Respondent Nos.1 to 6 (original Defendant Nos.1 to 6) filed Civil

Appeal No.642 of 2011 and Defendant Nos.7 & 8 filed Civil Appeal No.707 of 2011 challenging the Judgment and Decree of the Trial Court. Above Second Appeals have been filed by the Plaintiffs against the impugned Judgments and Decrees passed in the said appeals, as already indicated in opening paragraphs.

SUBMISSIONS

9. Mr. Sadavarte, learned Counsel for the Appellants submitted that the inaction on the part of their predecessor - Sadashiv will have no effect on the prayer of partition and separate possession as also on the declaration about sale-deeds and gift-deed. He submitted that since the mother of the Appellant (Hausabai - wife of Sadashiv) and wife of Sabaji (Prabhabai) were real sisters, there was no occasion for seeking partition. It is submitted that the revenue records indicates that Sabaji was elder brother and his name was entered and because of the cordial relationships, there was never any dispute and therefore the suit filed in the year 2005 is within limitation.

10. Mr. Thorat, learned Counsel for the Respondent Nos. 1 to 3 submitted that at the relevant time, old Limitation Act of 1908 was in force and under Article 44 thereof, limitation for a ward for challenging the transfer by guardian was 3 years from attaining majority. It is submitted that in absence of all the beneficiaries under various sale-deeds and gift-deed executed in respect of suit properties over a long period of time from 1927 onwards, the suit could not have been decreed and therefore the decree of the Trial Court has been rightly set aside. It is submitted that after considering the chart of all the properties, the Appellate Court has come to a proper conclusion that the Suit is barred by limitation and no interference is called for.

11. Mr. Kanetkar, learned Counsel for the Respondent No. 7 submitted

that original paragraph no. 4 of the Plaint was only about Sabaji being elder and therefore name of the Sadashiv not appearing in the revenue records. The original case was that the right of the Sadashiv was never extinguished or relinquished and therefore after the death of the Sadashiv the Appellants have the shares. He submitted that however the entire paragraph 4 was amended during the pendency of the Suit in 2009 taking up the plea that part of the Suit properties were sold to Khandu Balaji Jadhav and thereafter those properties were purchased by Ganapati Kanu Chandere and thereafter the said Chandere gifted part of the suit property to his daughters Gaubai and Dagadabai and although these documents have come into existence neither Kandu Balaji Jadhav nor Ganapati Kanu Chandere nor Gaubai nor Dagadabai ever had any ownership or possession and share of Appellants remained intact.

12. He submitted that this was an afterthought, after realizing that without challenging the registered documents of sale-deeds and gift-deed, the claim of the Appellants will not survive. He submitted that the Appellants' witness has given fatal admissions about long inaction and therefore the suit is barred by limitation.

13. Mr. Salunke, learned Counsel for the Respondent No. 8 has also supported the impugned Judgment and Decree. He submitted that inaction on the part of Sadashiv for very long time from 1927, throughout his lifetime, completely disentitle the Appellants' claim for partition and the old registered documents creating rights in favour of the parties cannot be disturbed.

CONSIDERATION

14. Having considered the rival submissions and having gone through the

record with the assistance of the learned counsel for the parties, I do not find any substantial question of law involved in the Appeal, for the following reasons.

15. The factual aspect about the relationship of the parties and existence of 3 old documents of 1927, 1932 and 1939 is admitted. It is also admitted that Sadashiv, who is predecessor of the Plaintiffs, had not challenged any of the registered documents. It is also admitted that Sadashiv did not claim partition.

16. The Trial Court has not considered the aspect of limitation. No issue is framed for limitation. This is in the teeth of section 3 of the Limitation Act.

17. At the time of first sale-deed in 1927, Sadashiv was about 13 to 14 years old. This has been considered by the Appellate Court in paragraph 8 of the impugned Judgment. Therefore sometime in 1932-33 Sadashiv has attained majority. Second sale-deed is of 1932. Therefore suit to challenge both the sale-deeds ought to have been filed by 1936-37 as per Article 44 of the then existing Limitation Act of 1908. Lets say by 1940. Gift-deed is of 1939 when Sadashiv was already major. So challenge to gift-deed should have been filed by 1942. These are registered documents and they have an element of knowledge *in rem*. Admittedly, no proceedings or suit has been filed by Sadashiv during his lifetime and till his death on 14.07.1991.

18. Even under Limitation Act of 1963, limitation for challenging alienation in any case, is 12 years maximum. Till 1991 when Sadashiv died, he did not take any steps to challenge the documents even under the presently applicable Limitation Act of 1963.

19. The inaction in the present case, on behalf of predecessor Sadashiv as well as the Plaintiffs is way too much, as the Suit is filed after minimum 65

years if the document of 1939 is considered, not to mention the earliest document which is of June 1927, which is challenged after 78 years. Unless registered documents are challenged in time and set aside, no partition decree can be passed in respect of those properties.

20. Record shows that the first sale deed of 1927 (under which part of suit properties went outside the family) was executed for meeting the family expense of Sadashiv's marriage. This indicates legal necessity. This has been considered by the Appellate Court in paragraph 7 of the impugned Judgment. The case of the Plaintiffs that parties were cultivating their shares separately for a very long time also assumes importance because alleged demand of partition and its denial in November 2005 is far too belated.

21. The argument about Plaintiff's mother Hausabai and Defendant's mother Prabhabai being sisters leading to partition not being demanded, is not well founded. It is rightly pointed out by the learned counsel for the Respondents that Sabaji had two wives; first was Dagadabai and second wife Pabhabai was sister of Plaintiffs's mother. In such situation, taking note of the typical relationship in which parties stand, I find it difficult to believe that partition will not be demanded for so long for this reason.

22. It is not disputed that the part of suit properties were sold to third persons, first in favour of Khandu Jadhav and then to Ganpat Kanhu Chandere in 1927 and 1932. Once the properties are sold by registered documents out of family, they do not remain part of the joint family property. The argument that despite such registered documents in favour of third persons, the property remains as property of the joint-family and it remains in their joint possession, is simply absurd. This argument and case is only stated to be rejected.

23. Eventually by reason of marriage of the purchaser's daughter (i.e. Dagadabai being daughter of Ganpat Kanu Chandere) in this family, if any property is gifted to such daughter-in-law from her father, that property cannot be considered as joint family property and therefore, Plaintiffs cannot claim any right/share therein.

24. For objective satisfaction of this Court, I have gone through the cross-examination of the Appellant's sole witness (Appellant No. 1-Baban). He has admitted following facts :

- (i) That Sadashiv and Sabaji were separated in mess.
- (ii) That his father Sadashiv did not object to the sale deed of 1932.
- (iii) That some of the suit properties are covered by the gift deed, about which he or his father did not file any Appeal or challenged the same.
- (iv) That under the 7/12 extracts produced on record, the Defendants are in possession and about those revenue records, he or his father has not filed any Appeal.
- (v) That he has not filed any Appeal against mutation entry nos. 1449, 2543, 686, 630 and 614 which are apparently the entries about names of Defendants entered into the Suit property.
- (vi) That he has no personal knowledge about events prior to 1945 and he does not have personal knowledge of sale deed of 1927 and 1932.
- (vii) That his father Sadashiv never filed any suit challenging 1927 and 1932 documents.

(viii) That Sadashive and Sabaji were paying separate taxes for their separate houses and Defendants never came to reside in house no 53, which is in possession of Plaintiff Nos. 2 and 4 and the Plaintiffs were maintaining that house themselves and Sabaji was maintaining separate house no. 51.

(ix) That in respect of some of the suit properties, they are standing in the name of third party, who are not party to the suit.

25. It is only trite that there is presumption of 'joint family' but not of 'joint family property' in the hands of a family member. Long-standing revenue entries, though not conclusive proof of family partition, requires looking at the entire evidence including family conduct. In the facts of the present case, conduct of Plaintiffs and their predecessor Sadashiv assumes crucial importance. Useful reliance can be placed on **U.R.Virupakshappa Vs. Sarvamangala and Anr – (2009) 2 SCC 177** where the Hon'ble Supreme Court has observed as under :

“13. It is well settled that the presumption in regard to existence of joint family gets weaker and weaker from descendant to descendant and such weak presumption can be rebutted by adduction of slight evidence of separate possession of the properties in which even the burden would shift to the plaintiffs to prove that the family was a joint family”

26. In the present case, a span of about eight decades has passed. In view of the aforesaid admissions and long standing mutation entries, which are not challenged by the Plaintiffs or their predecessor - Sadashiv, it is apparent that the two branches of Sadashiv and Sabaji were separated and the properties were already divided. Therefore the hopelessly belated claim made in 2005, after retirement of Appellant No. 1-Baban (sole witness) from service in 2005, is rightly rejected by the Appellate Court.

27. Therefore, no substantial question of law is arising in the Appeals for consideration. Factual aspects are decisive.

28. Accordingly both the second appeals are dismissed. Pending interim applications (for injunction/stay) are also dismissed. No order as to the costs.

29. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)