



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.22 OF 2025

Appellant : Smt. Jaswantibai Durgaprasad Nagpure,
 Ori. Defendant on R.A. Aged about 51 Years, Occupation : Household,
 R/o Ratnara, Tah. & Distt. Gondia.
 – Versus –

Respondents : 1] Nilesh s/o Fulchand Banote,
 Ori. Plaintiff on R.A. Aged about 44 years, Occupation : Labour.
 2] Lalitkumar s/o Fulchand Banote,
 Aged about 39 years, Occupation : Labour.
 3] Ku. Ramkali (Ramkala) d/o Fulchand Banote,
 Aged about 27 years, Occupation : Household.
 All r/o Hivra, Post Ratnara, Tah. & District Gondia.

 Mr. V.U. Waghmare, Advocate for the Appellant.
 Mr. D.V. Mahajan, Advocate for the Respondents.

CORAM : **M.W. CHANDWANI, J.**
DATE : **4th MARCH, 2025.**

ORAL JUDGMENT :

Heard the learned Counsel appearing for the parties.

02. **Admit.**

03. The present appeal challenges the judgment and decree passed
 by the learned Principal District Judge, Gondia on 31/01/2020, whereby the

appeal bearing R.C.A. No.71/2017 filed by the respondents came to be allowed by giving them a share in Gat No.253/1 and 231.

04. The respondents filed a suit for partition and separate possession against their maternal aunt in the property left by her father Kanhaiyyalal. The respondents are legal heirs of Nanibai, the sister of the appellant-Jaswantibai. The trial Court partly decreed the suit. However, no share was given by the trial Court to the respondents in Gat No.231 and 253/2 on the ground that the said property was gifted by Kanhaiyyalal during his life time to the appellant. However, the said findings were set aside by the first appellate Court and the respondents were granted a share in Gat No.231 and 253/2 also. Feeling aggrieved with the judgment and decree of the first appellate Court, the second appeal came to be filed.

05. Having heard the learned Counsel for the appellant and the learned Counsel for the respondents and having gone through the judgment of the trial Court and the impugned judgment, it transpires that the suit property was owned by Kanhaiyyalal. Nanibai, the mother of the respondents and the appellant are real sisters. Deceased Kanhaiyyalal died leaving behind Nanibai and the appellant. After the death of Kanhaiyyalal, it appears that the name of the appellant was appearing on 7/12 Extract of Gat No.231 and 253/2, whereas in the revenue record of the other suit property, the name of

both Nanibai and appellant-Jaswantibai were appearing. The appellant came with a case that Gat No.253/2 and 231 were given by Kanhaiyyalal to her during his life time, but no gift-deed or any other document has been produced on record. No doubt, the revenue record of Gat No.253/2 and 231 records the name of the appellant, but no gift-deed or any other documents showing transfer of this property by Kanhaiyyalal in favour of the appellant has been filed on record.

06. The learned Counsel for the appellant submitted that there is a presumption that the Record of Right holds good for right, title and interest in respect of the property so recorded therein in favour of the holder of the said Record of Right. To buttress his submission, the learned Counsel for the appellant seeks to rely on the decision in the case of Gita Mishra vs. Premananda Mishra and Ors.¹, wherein the Orissa High Court while dealing with the issue of Consolidation Record of Right held that the Record of Right holds good for right, title and interest in respect of the property so recorded therein in favour of the holder of the said Record of Right as the Authorities under the Act have all the powers to adjudicate and decide upon those disputed questions. However, in the case before the Orissa High Court, the issue of preparing a Consolidation Record of Right after considering all the material and record under the said Act was under consideration. Whereas, in

1 AIR Online 2021 Ori. 234.

the present case, it is not the case that the name of the appellant has been recorded after true settlement on Consolidation Record of Right.

07. In the present case, the name of the appellant was mutated after the death of her father-Kanhaiyyalal on the premise that Kanhaiyyalal had given her the property. Therefore, the ratio laid down in the case of **Gita Mishra** (*supra*) will not be helpful to the appellant. Moreover, the appellant is claiming the transfer of property in her name from her father-Kanhaiyyalal without any gift-deed much less a transfer-deed. Therefore, the first appellate Court was right in including the property of Gat No.231 and 253/2 in the decree for partition. Therefore, no substantial question of law arises in this appeal.

08. Accordingly, the appeal stands dismissed with no order as to costs.

(M.W. Chandwani, J.)