



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

CIVIL APPLICATION [CAS] NO. 1176/2023
AND SECOND APPEAL ST. NO. 17643/2023.

1.Narayan s/o Bhaulal Nagpure,
Aged about 61 years, Occupation -
Agriculturist, resident of Latori,
Tahsil Salekasa, District Gondia.

2.Laxmibai @ Puspabai d/o Bhaulal Nagpure,
(Now Laxmibai @ Puspabai w/ok Someshwar Damahe
Aged about 53 years, Occupation -
Household, resident of Kulpa Karanja,
Tahsil Lanji, District Balaghat (M.P.)

3.Laxman s/o Bhaulal Nagpure,
Aged about 61 years, Occupation -
Agriculturist, resident of Latori,
Tahsil Salekasa, District Gondia.

4.Fulkeshwari wd/o Govinddas Pagarwar,
Aged 57 years, Occupation – Household,
resident of Kunbitola (Kawarabandh)
Tahsil Salekasa, District Gondia.

5.Barik s/o Devchand Baraiyya,
Aged about 60 years, Occupation -
Agriculturist, resident of Gonditola (Zaliya),
Tahsil Salekasa, District Gondia.

6.Sahebadas s/o Devchand Baraiyya,
Aged about 58 years, Occupation -
Agriculturist, resident of Gonditola (Zalita),
Tahsil Salekasa, District Gondia.

7.Balakdas s/o Devchand Baraiayya
Aged about 55 years, Occupation -
Agriculturist, resident of Gonditola (Zaliya),
Tahsil Salekasa, District Gondia.

8.Mandas s/o Devchand Baraiayya
Aged about 52 years, Occupation -
Agriculturist, resident of Gonditola (Zaliya),
Tahsil Salekasa, District Gondia.

9.Sevantabai w/o Shobharam Pagarwar,
Aged about 48 years, Occupation -
Household, resident of Mohantola (Kawarabandh),
Tahsil Salekasa, District Gondia.

10.Jaywantabai s/o Shivlal Machirke,
Aged about 46 years, Occupation -
Household, resident of Latori,
Tahsil Salekasa, District Gondia.

APPLICANTS.
Ori. Defendants.

VERSUS

1.Bhagwantibai wd/o Nehrulal Nagpure,
Aged about 62 years, Occupation -
Household, resident of Latori,
Tahsil Salekasa, District Gondia.

2.Chandrakalabai d/o Nehrulal Nagpure,
(Chandrakalabai w/o Balakdas Dahare)
Aged about 42 years, Occupation -
Household, at present resident of
Dongargaon, Tahsil Lanji, District
Balaghat (M.P.)

3.Fulkuwarbai w/o Kisanlal Lilhare,
Aged about 57 years, Occupation -
Household, resident of Gowaritola
(Kawarabandh) Tahsil Salekasa, District Gondia.

4.Lekhchand s/o Fattelal Lilhare,
Aged about 67 years, Occupation -
Agriculturist, resident of Gowaritola
(Kawarabandh)
Tahsil Salekasa, District Gondia.

5.Yeshwantibai w/o Gajalal Lilhare,
Aged about 57 years, Occupation -
Agriculture, resident of Kunbitola
(Kawarbandh) Tahsil Salekasa,
District Gondia.

6.Tilakchand s/o Holiam Lilhare,
Aged about 63 years, Occupation -
Agriculturist, resident of Kunbitola
(Kawarbandh) Tahsil Salekasa, District Gondia.

7.Chitrakumar s/o Govinddas Pagarawar,
Aged about 47 years, Occupation -
Agriculture, resident of Gowaritola
(Kawarbandh) Tahsil Salekasa, District Gondia.

8.Chhotelal s/o Keshar Lilhare,
Aged about 63 years, Occupation -
Agriculturist, resident of Kunbitola
(Kawarbandh) Tahsil Salekasa, District Gondia.
(Matter abated against respondent no.8 vide order
of Registrar (Judicial) dated 17.10.2024)

9.Raju s/o Natthelal Banote,
Aged about 59 years, Occupation -
Agriculturist, resident of Kunbitola
(Kawarbandh) Tahsil Salekasa, District Gondia.

10.Shri Chandrashekhar s/o Kailash Chaurasia,
Aged 40 years, Occupation - Advocate
resident of 298, Vishaka Cooperative Housing
Society, Gorewada, Nagpur 440 013.

(Added as per Courts order dated 20.06.2024)

RESPONDENTS.
Ori. Plaintiff.

Shri S.G. Karmarkar, Advocate for Applicants/Appellants.
Shri A.Z. Jibhkate, Advocate for Non-applicant Nos.1 and 2.
Non-applicant Nos.3 to 9 Served.

CORAM : ROHIT W. JOSHI, J.

DATE : MAY 02, 2025.

ORDER :

Heard.

2. There is delay of 427 days in filing Second Appeal. It is stated in the application that the papers were entrusted to the Advocate for filing Second Appeal, however, it was realized that the Second Appeal infact was not filed. A statement is made that the applicants came to know about the fact that appeal was not filed, when they made enquiry in the matter after receiving notice in the execution proceeding, which was received on 09.06.2023. The appeal is filed thereafter on 23.06.2023.

3. Despite serious opposition by the learned Counsel for the non-applicants, the delay is condoned in the interest of justice having regard to the explanation offered. The delay is also condoned in view of the statement made by the learned Counsel for the applicants, that he is ready to argue the appeal on admission today itself. Civil Application is accordingly allowed and disposed of.

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Second Appeal St.No.17643/2023.

Heard.

2. This Second Appeal is preferred by the original defendant nos. 1 to 5 challenging the decree for partition and separate possession passed against them in Regular Civil Suit No.45/1994, which is confirmed by the learned First Appellate Court by dismissing Regular Civil Appeal No.77/2015. The contention of the applicants/ original defendants is that the suit properties are received by the deceased defendant no.1 from his mother Sukibai, and therefore, the suit properties are self-acquired property of defendant no.1.

2. With the able assistance of both the learned Counsel the findings recorded by both the Courts are examined along with the pleadings and exhibited documents on record. The learned Courts have recorded that the suit properties are ancestral properties. The learned Courts have elaborately dealt with the documentary evidence in the form of revenue records and oral evidence led by the parties on this aspect. The findings recorded by the learned Courts clearly show that the properties were purchased by defendant no.1 from joint family nucleus, which is duly established from the evidence on record. In that view of the matter, by any stretch of imagination the findings cannot be said to be perverse. Having regard to the limited scope of appeal under Section 100 of the Code of Civil Procedure, which can be entertained only on a substantial question of law, I am inclined to hold that the appeal does not give rise to any substantial question of law on the ground of perversity and the same is therefore, dismissed, with no order as to costs.

JUDGE