



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

SECOND APPEAL NO.620 OF 2018

APPELLANT : **Shri Dinesh S/o Shivshankar Badwaik,**
On R.A. Aged : 38 years, Occ : Business, R/o.
(Ori. Def.1) Near Shraddha Printing Press,
Ganeshpur, Tq. & Dist. Bhandara.

..VERSUS..

RESPONDENTS : 1. **Shri Parag S/o Shivshankar Badwaik,**
On R.A. Aged : 37 years, Occ : Business, R/o.
(Ori. Plnt.) Ambedkar Ward, Ganeshpur, Tq. &
Dist. Bhandara.
2. **Shri Prakash S/o Karuji Bokde,**
Aged : 54 years, Occ : Contractor, R/o.
Near Shraddha Printing Press,
Ganeshpur, Tq. & Dist. Bhandara.

Mr U. K. Bisen, Advocate for Appellant.

Mr Y. N. Thengre, Advocate for Respondents.

CORAM : **M. W. CHANDWANI, J.**

RESERVED ON : **10th JULY, 2025.**

PRONOUNCED ON : **9th SEPTEMBER, 2025.**

JUDGMENT

1. Being dissatisfied with the judgment and decree dated
26.06.2018 passed by the District Judge, Bhandara in Regular Civil

Appeal No.2 of 2014, thereby setting aside the judgment and decree dated 02.12.2013 passed by the Civil Judge Senior Division, Bhandara in Special Civil Suit No.52 of 2012, the present second appeal came to be filed.

2. On 11.12.2018, the following substantial question of law was framed:-

“Whether the finding recorded by the appellate Court that the suit property was the self acquired property of three brothers namely Shivshankar, Vishwanath and Ramkrushna is contrary to the recitals of the Partition-deed and the other evidence on record ?”

3. Thumbnail sketch of the facts is as under:-

Appellant- Dinesh and respondent No.1- Parag are the sons of Shivshankar Badwaik. Parag (original plaintiff) filed a suit for declaration, possession and a direction to Dinesh (defendant no. 1) to pay the sum of damages to the first floor of the suit house. Parag claimed that his father Shivshankar Badwaik alongwith his two brothers namely Ramkrushna Badwaik and Vishwanath Badwaik had purchased a ready made old house by a registered sale deed dated 03.01.1974. As the said house was old and in a dilapidated condition, his father - Shivshankar and his uncle Ramkrushna constructed a new house by demolishing the old house. Shivshankar started residing in the west block whereas, Ramkrushna had given the east block on

tenancy to others. Vishwanath alongwith his family was residing in another house at Ganeshpur. A partition of the suit house took place between Shivshankar, Ramkrushna and the legal heirs of deceased Vishwanath. In the said partition, west block of the suit house was allotted to Shivshankar and east block was allotted to Ramkrushna. During the lifetime of Shivshankar, Dinesh (original defendant No.1) broke the lock of the ground floor and illegally took possession of the ground floor and 1st floor premises entirely. Shivshankar reported the matter to the police. Dinesh had inducted a tenant in the 1st floor of the west block which originally belonged to Shivshankar. It was contended on behalf of Parag that Shivshankar gifted the suit house to Parag by gift-deed dated 18.03.2010 and Dinesh was given a block on rent with electronic equipments worth Rs.2,50,000/- to enable him to run an electronic shop. After becoming the owner of the suit house, Parag issued a notice to Dinesh calling upon him to vacate the suit premises but he failed to do so. Therefore, the suit for possession came to be filed.

4. Dinesh came-up with a defence that the suit house was purchased jointly out of the income of the ancestral property accrued from old house No.163 situated at Nehru Ward, Ganeshpur and by selling ancestral ornaments. Therefore, the suit house is an ancestral

property and he has a share in the same. Dinesh possessed the 1st floor in consequence of the family arrangement. Shivshankar with intent to oust Dinesh from the suit house, executed the gift-deed in favour of Parag.

5. The Trial Court dismissed the suit holding that the suit house was purchased by three brothers from the income accrued from ancestral property. Respondent No.1- Parag carried the matter in appeal before the learned District Judge, Bhandara. The learned District Judge, Bhandara overturned the decree passed by the Trial Court by allowing the appeal. Feeling aggrieved with the judgment and decree passed by the First Appellate Court, the present appeal came to be filed.

6. Indisputably, the suit house was purchased jointly by Shivshankar, Ramkrushna and Vishwanth by registered sale-deed dated 03.01.1974. It is the case of respondent No.1- Parag that the suit house was purchased by his father and two brothers from their joint income. In partition, half portion of the suit house constructed by Shivshankar was allotted to him whereas, the remaining portion was allotted to Ramkrushna and Vishwanath got Rs.5,000/- apart from another ancestral house. Appellant- Dinesh has come up with a

case that the said house was purchased out of the ancestral money and gold ornaments and therefore, according to him, it is joint family property. Shivshankar, the father of respondent No.1 as well as the appellant was not the absolute owner of half portion of the suit house. Therefore, gift-deed executed by him in favour of respondent No.1 Parag is not valid.

7. The sale-deed dated 03.01.1974 shows that the suit house was jointly purchased by three brothers. The evidence led by the parties before the Trial Court reveals that Shivshankar, Ramkrushna and Vishwanath were residing as joint family members in the ancestral house. It is the case of Dinesh that Plot No.248 is the ancestral property, since it was purchased from ancestral money and gold. The burden was on Dinesh to show that there was sufficient nucleus available with the Joint Hindu Family to purchase the property. Dinesh has only deposed in his evidence that there was ancestral money and gold. Apart from the bare written statement and evidence, no detail has been given by Dinesh with regard to the ancestral money and the gold ornaments. Dinesh failed to prove how much money and how much gold was in possession of the three brothers. No details have been produced by appellant- Dinesh to arrive at the conclusion that the joint family fund was available to

purchase the suit property. Therefore, the First Appellate Court rightly held that appellant- Dinesh failed to prove that the suit house was purchased from the joint family fund. The presumption would arise only that if it is shown that there was sufficient nucleus. In absence of such evidence, the suit property cannot be said to be joint family property. Merely because the occupation of Vishwanath was shown as nil, it cannot be presumed that he had not contributed any consideration amount to purchase the suit Plot No.248.

8. It is a matter of record that both Shivshankar and Ramkrushna were in service and they were earning members of the family, whereas Vishwanath was not in service. Perhaps that may be the reason for writing the occupation of Vishwanath as nil but it does not pre-suppose that Vishwanath was not earning. Respondent No.1-Parag has examined his father Shivshankar who in categorical terms deposed that the suit house was purchased out of the joint income of three brothers. The sale-deed also does not mention that the suit house was purchased out of the ancestral money. Apart from that, nothing has been brought on record by appellant- Dinesh to show that the joint family corpus was available to purchase the plot.

9. This takes me to the partition deed. The suit house has been shown as ‘‘सामुहीक मालकीची जायदाद’’. The Trial Court misread these words as ‘‘Common Joint Family Property’’. The actual interpretation is ‘‘Joint Ownership Property’’ and not ‘‘Common Joint Family Property’’. That apart, the legal heirs of Vishwanath had relinquished their shares as joint owners by receiving Rs.5,000/- as consideration of their share in Plot No.248. Therefore, recitals in the partition deed also cannot be said to be contrary with regard to the nature of the suit house.

10. Appellant- Dinesh failed to prove that sufficient nucleus was available to purchase the joint family property, contrary to the cogent evidence on record that Shivshankar and Ramkrushna were in service in Zilla Parishad and Ordinance Factory respectively and they were earning members of the family. It is a cardinal principle of law that the presumption that the property purchased is joint family property arises only when it is proved that there was sufficient means available with the Hindu Joint Family at the time of purchase of the property which is not the case here. Therefore, the First Appellate Court has rightly relied on the case of *Harihar Diwakar Choube and Ors. vs. Govind Diwakar Chobe and Ors.*, 2010 (4) Mh. L. J. 524. Merely because the joint family consisted of three brothers, it cannot

be said that they cannot jointly purchase the property from their earnings. No perversity can be seen in the findings of the First Appellate Court while overturning the findings recorded by the Trial Court. Even though, the property was purchased by three brothers jointly, it has not been proved that the property was purchased from the nucleus of the joint family.

11. There is no merit in the appeal and hence, it is dismissed.

(M. W. CHANDWANI, J.)

Tambe.