



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
SECOND APPEAL NO. 476 OF 2023

APPELLANT :- Shripad s/o Ramakant Jahagirdar, Age
Ori. Appellant 49 years, Occ: Agriculturist, r/o.
On R.A. Mangrulpir, Taluka Mangrulpir, District
Washim.

..VERSUS..

RESPONDENT :- Sadanand s/o Laxmikant Jahagirdar,
Ori. Respondent Age 49 years, Occ: Agriculturist, r/o.
On R.A. Mangrulpir, Taluka Mangrulpir, District
Washim.

Mr. Ravi R. Srivastava, Advocate for Appellant.
Mr. Anup J. Gilda, Advocate for the Respondent.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **24.09.2025**

JUDGMENT :

- 1) Heard finally with consent of learned counsel for the respective parties.
- 2) The appellant has filed a suit for possession of the suit property, which is an agricultural land bearing Survey No. 102 admeasuring about 6.78 H.R., situated at Village Shendurjana Morey, Tahsil Mangrulpir, Dist. Washim (hereinafter, referred as 'suit property' for short)
- 3) It is the case of the appellant that he had

purchased the suit property vide Sale Deed dated 13.03.2003, executed in his favour by his paternal aunt, Kusumbai. The suit is dismissed on the ground that the vendor of the appellant did not have title over the suit property. The appeal preferred by the appellant is also dismissed on the same ground. These concurrent decrees dismissing the suit for possession are the subject matter of challenge in the present second appeal.

4) One Gajendra Jahagirdar was blessed with three sons, namely Ramakant, Laxmikant and Suryakant. On 19.01.1958 a registered deed of partition was executed by the father-Gajendra and aforesaid three sons. Apart from the three sons Gajendra was also blessed with two daughters, namely Kusumbai and Maltibai. The appellant is the son of Ramakant and respondent is son of Laxmikant.

5) As per the case of the appellant, the suit property was allotted to the share of Suryakant in the partition of the year 1958. Suryakant has died issueless. The case of the appellant is that there was an oral partition in the family somewhere around the year 1970-1971, under which the suit

property bearing Survey No.102 was allotted to the share of Kusumbai and Maltibai, the sisters of fathers of appellant and respondent.

6) The appellant further claims that Maltibai had thereafter, relinquished her share in the suit property in favour of Kusumbai and accordingly Kusumbai had become absolute owner of the suit property bearing Survey No. 102.

7) It is the contention of the appellant that Laxmikant, the eldest son of Gajendra and father of respondent, was cultivating the suit property on behalf Kusumbai and used to hand over the net income earned from the suit property to Kusumbai every year. He contends that after the demise of Laxmikant, his son, the respondent, started cultivating the land on behalf of Kusumbai.

8) According to the appellant, Kusumbai sold the property to him vide registered Sale Deed dated 13.03.2003 and he had sown soyabean in the said property in the month of June, 2003. He has alleged that on 08.07.2003, the respondent destroyed the crop as a consequence of which the appellant filed a civil suit against him seeking injunction

against forcible dispossession.

9) The appellant further avers that after rejection of the application for temporary injunction, the respondent took forcible possession of the suit land somewhere around July 2005 as a consequence of which the plaint was amended in order to seek relief of possession.

10) The defendant opposed the suit on the ground that Kusumbai, the vendor of the appellant, had no right over the suit property and, therefore, the alleged sale deed did not confer any title upon the appellant. The respondent also alleged that Suryakant had given the suit field to Laxmikant for cultivation.

11) The learned Trial Court framed issues on rival pleadings and recorded evidence of the parties. The learned Trial Court has considered the documentary evidence on record, including mutation entries in favour of Kusumbai.

12) The learned Trial Court has held that the property was given to vendor of the appellant, Kusumbai, for maintenance without any right to transfer the same. It is

observed that the evidence did not suggest that this arrangement was made with the consent of Suryakant, to whom the suit property was allotted in the partition of the year 1958. It is, therefore, held that Kusumbai did not have a right to sell the suit property.

13) The learned First Appellate Court confirmed the said findings recorded by the learned Trial Court. The learned First Appellate Court has referred the entries in the record of rights where only right of maintenance in the nature of life interest was created in favour of Kusumbai.

14) In view of the such findings, the learned First Appellate Court has also concurred with the opinion of the learned Trial Court that Kusumbai had no marketable title to sell the suit property.

15) At the outset, it needs to be mentioned that the question of limited estate in a property, which is given towards maintenance, ripening into full estate was not raised before both the learned Courts as also before this Court.

16) As regards the allotment of suit property to Kusumbai in absolute ownership rights in oral partition, it is

undisputed that, other than the revenue records, there is no other evidence to establish the said fact. The revenue records indicate only a limited right of maintenance was conferred on Kusumbai.

17) Both the learned Courts have appreciated the entries in the revenue records, which clearly state that only a right to enjoy the suit property during her lifetime was conferred on Kusumbai. In view of the above, the finding by the learned Courts that Kusumbai the vendor did not have any marketable title over the suit property, since she was not the owner thereof, cannot be disturbed.

18) Mr. Ravi Shrivastav, the learned Advocate for the appellant, contends that, admittedly, Suryakant is no more and therefore, even if it is held that the appellant is not the owner of the suit property by virtue of the sale deed executed in his favour by Kusumbai rather than dismissing the suit the learned Courts ought to have granted a decree for partition and separate possession since the appellant and respondent are the representing branches of brothers of deceased Suryakant, who has died issueless without leaving any Class-I

legal heirs.

19) The appellant and respondent are Class-II legal heirs of deceased Suryakant and they fall under Class-II, Entry IV. It is undisputed that, Suryakant also had two sisters, namely Kusumbai and Maltibai. The sisters fall under Class-II, Entry-II. It is not known whether sisters are alive or not. Section 9 of the Hindu Succession Act, 1956, provides that in case the property of a deceased Hindu male devolves by intestate succession on Class-II legal heirs, then the legal heirs in a higher entry shall exclude those in lower entries.

20) In view of the above, the brothers of Suryakant namely Ramakant and Laxmikant as brothers and Kusumbai and Maltibai as sisters of Suryakant will inherit the property to the exclusion of the appellant and respondent. Even if any one brother or sister is alive he will take entire estate of Suryakant to the exclusion of appellant and respondent.

21) Assuming that the brothers and sisters are not alive, then the children of brothers and sisters will take the property simultaneously. The appellant and respondent alone

cannot inherit the entire property. It is not known as to whether the appellant and respondent have other brother/s and/or sister/s. It is also not known as to whether the two sisters of deceased Suryakant are survived by any children who also will inherit the property together as heirs in Entry IV of Schedule II.

22) In such circumstances, the alternate prayer for passing a decree for partition and separate possession also cannot be considered.

23) In view of the above, no substantial question of law arises for consideration in the present second appeal.

24) The Second Appeal is, therefore, liable to be **dismissed**.

25) No order as to costs.

26) Liberty is granted to the appellant to file a suit for partition and separate possession with respect to the suit property, which if filed, be decided in accordance with law.

Corrected as per
Court's order
dated 14.10.2025.

(ROHIT W. JOSHI, J.)

Tanmay..