IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.644 OF 2024

Dajiram Sabaji Bagal
through his legal heirs
Vimal Dajiram Bagal & Ors. ....Appellants
V/S
Gopinath Sakharam Pokharkar & Ors. ....Respondents

WITH
INTERIM APPLICATION NO.10220 OF 2025
IN
SECOND APPEAL NO.644 OF 2024

Dajiram Sabaji Bagal
through his legal heirs
Vimal Dajiram Bagal & Ors. ....Applicants
IN THE MATTER BETWEEN:
Dajiram Sabaji Bagal
through his legal heirs
Vimal Dajiram Bagal & Ors. ....Appellants
V/S
Gopinath Sakharam Pokharkar & Ors. ....Respondents

Mr. Shreepad Murthy i/b Mr. Abhishek Patil *for the Appellants/ Applicants.*
Mr. Samir Suryawanshi *for Respondents.*

CORAM : SANDEEP V. MARNE, J.
DATE : 05 OCTOBER 2026.

P.C.:

1. This Appeal challenges judgment and order dated 23 October 2023 passed by the learned *Ad hoc* District Judge-1, Khed-Rajgurunagar,

District Pune, dismissing Regular Civil Appeal No.20 of 2021 and confirming the Trial Court's decree dated 1 October 2019. The Trial Court had decreed the Plaintiffs' suit by declaring Plaintiffs as owners of the suit property and by directing the Defendants/Appellants to hand over possession of the suit property to the Plaintiffs.

2. I have heard Mr. Murthy, the learned counsel appearing for Appellants and Mr. Suryawanshi, the learned counsel appearing for Respondents. I have considered the submissions canvassed by the learned counsel appearing for parties and I have gone through the findings recorded by the Trial and the Appellate Courts.

3. The suit property stood in the name of deceased Jagannath. It was purchased in the name of deceased Jagannath. Plaintiffs are the first cousins of Jagannath, since father of Jagannath and that of Plaintiffs were real brothers. On the other hand, Defendants are Jagannath's father's sister's sons. The Trial Court has accordingly held that Plaintiffs fall in the category of agnates, whereas Defendants fall in the category of cognates. Applying provisions of Section 8(c) of the Hindu Succession Act, the Trial Court has ruled that Plaintiffs' right of succession would prevail over the right of the Defendants.

4. The Defendants also came out with a bizarre defence that they are the real owners of the suit property since they paid the consideration for purchase of the suit property in the name of Jagannath. Mr. Murthy contends that Defendants' family looked after Jagannath after death of

his mother and that Jagannath never had any income to purchase the suit property. He submits that Plaintiffs' case of acquisition of suit property through joint family income is already negatived by the Trial Court. Though the above defence was raised by the Defendants, they thoroughly failed to prove the same. According to Mr. Murthy it is Plaintiffs' burden to prove valid acquisition of title in respect of the suit property in the name of Jagannath. I am unable to agree. If Defendants raise the defence of they being the real owners of the suit property purchased in the name of Jagannath, the burden was on their shoulders to prove the same. No cogent evidence is produced by the Defendants to prove purchase of the suit property in the name of Jagannath by paying consideration by the Defendants.

5. Even though Plaintiffs failed to prove that suit property was acquired by Jagannath through joint family income, the same would mean that the suit property was self-acquired property of Jagannath. Therefore, rejection of contention of acquisition of suit property through joint family income does not really inure to the benefit of the Defendants.

6. In the present case, it is fully established that Plaintiffs are the agnates, whereas Defendants are cognates. Plaintiffs have better right to succeed to the estate of Jagannath. There are concurrent findings recorded by the Trial and the first Appellate Courts against the Defendants/ Appellants. No substantial question of law is involved in the present Appeal. There is no warrant for admission of the Appeal. The Second Appeal is accordingly **dismissed**.

7. In view of the disposal of the Second Appeal, nothing would survive in pending Interim Application for stay, and the same is accordingly **disposed of.**

(SANDEEP V. MARNE, J.)

Signed by: Sudarshan R. Kadam
Designation: PS To Honourable Judge
Date: 06/10/2026 15:13:58