

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 239 OF 2026

Mahadibai Hasha Patil

Since decd. Through LR's & ors.

..Appellants

Versus

Lilabai Ambaji Patil & ors.

...Respondents

WITH
INTERIM APPLICATION NO. 3485 OF 2026
IN
SECOND APPEAL NO. 239 OF 2026

Mr. Rahul Thakur, for the Appellant.

CORAM: N. J. JAMADAR, J.

DATED : 10th JUNE 2026

ORAL ORDER:

1. Heard the learned Counsel for the appellant.
2. This Second Appeal is directed against a judgment and decree dated 10th January, 2025, passed by the learned District Judge, Panvel in Regular Civil Appeal No. 556/2019 whereby the appeal preferred by the appellants/original plaintiffs against a judgment and decree passed by the Civil Court in Special Civil Suit No. 93/2004, came to be dismissed.
3. The appellant had instituted the said suit for declaration and perpetual injunction. The case of the appellants was that, there were in all 22 immovable properties which stood in the

name of Krishna Keni @ Shankar Keni as a manager of the joint family. The plaintiffs had 1/6th share in all the suit properties.

4. The learned Civil Judge, was not persuaded to accede to the case of the plaintiffs. It was found that, the plaintiffs had $\frac{1}{4}^{\text{th}}$ share in two of the properties, namely Survey Nos. 62/2 and 86/6, only. The names of the predecessor-in-title of the plaintiffs were mutated to the record of rights of the aforesaid properties. The plaintiffs failed to establish that, the rest of the properties were the joint family properties. Thus, the suit came to be partly decreed.

5. Being aggrieved, the appellants preferred Regular Civil Appeal No. 556/2019 before the District Court. The learned District Judge found no reason to interfere with the decree passed by the trial Court.

6. Mr. Thakur, the learned Counsel for the appellant, submitted that, though the Courts below have recorded the concurrent findings of facts, yet, the trial Court had committed an error in returning the finding that, Krishna Keni @ Shankar Keni, was the exclusive owner of 20 immovable properties on the basis of a decree passed in Regular Civil Suit No. 169/1947 which was instituted by late Krishna Keni, against Husain Kacchi, for redemption of mortgage. The learned District Judge

was also in error in not correcting the mistake committed by the trial Court and mechanically affirming the said finding.

7. From a perusal of the impugned judgment, it becomes evident that, the learned District Judge has recorded a categorical finding that after the defendants led the evidence onus shifted upon the plaintiffs to prove that the rest of the 20 properties were the joint family properties and the plaintiffs failed to adduce evidence, in proof of the said fact.

8. The material on record indicates that, the plaintiffs had failed to adduce evidence to substantiate their primary case that the balance 20 properties were also the joint family properties. Irrespective of the evidence adduced by the defendants, it was for the plaintiffs to establish that the properties, in respect of which they were seeking a declaration, were the joint family properties. As the courts below on the basis of appreciation of evidence, have returned the findings of fact that the plaintiffs failed to prove that the said 20 properties were joint family properties, such findings of fact are not open for interference in exercise of appellate jurisdiction under the regime of Section 100 of the Code of Civil Procedure, 1908.

9. In the aforesaid view of the matter, no substantial question of law arises for consideration.

10. The Second Appeal thus stands dismissed.
11. In view of the dismissal of the Second Appeal, the Interim Application also stands dismissed.

[N. J. JAMADAR, J.]