

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 554 OF 2025

Ajitsingh Surjitsingh Bagga ..Appellant
Versus
Surjitsingh Amarsingh Bagga and Ors ...Respondents

WITH
SECOND APPEAL (STAMP) NO. 4924 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 14552 OF 2025
IN
SECOND APPEAL (STAMP) NO. 4924 OF 2025

Ajitsingh Surjitsingh Bagga ..Appellant
Versus
Sou Laxmibai Manohar Dhanawade Through her ...Respondent
Power of Attorney Holder Manohar Raghu
Dhanavade

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RAMCHANDRA
SANKPAL

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Mr. Nitin P Deshpande, for the Appellant in both Appeals.
Mr. Akshay Kulkarni (through VC), with Hrutik Chavan, for the
Respondents in both Appeals.

CORAM: N. J. JAMADAR, J.
DATE : 30th APRIL 2026

ORDER:

SECOND APPEAL NO. 554 OF 2025:

1. Heard Mr. Nitin Deshpande, the learned Counsel for the Appellant, and Mr. Akshay Kulkarni, the learned Counsel for the Respondent at some length.

2. Second Appeal No. 554 of 2025 is directed against a judgment and order dated 21st September 2024 passed by the learned District Judge, Pune, whereby RCA No. 67 of 2016 preferred by the Appellant against the judgment and decree dated 26th February 2010 in SCS NO. 136 of 2004, instituted by the Appellant, came to be dismissed.

3. Late Sujankaur Bagga, Defendant No.2 was the mother of the Plaintiff. Defendant No.1 was the Plaintiff's father and Defendant Nos. 4 and 5 were the brothers of the Plaintiff. SCS No. 136 of 2004, came to be instituted by the Plaintiff asserting that the Flat No. 1 on the first floor of the building in Santosh Cooperative Housing Society, Erandwane, Pune, ("the suit flat") was the joint family property of the Plaintiff and Defendant Nos. 1 to 5, though Defendant No.1 had purchased the suit flat in the name of Surjitsingh Bagga Kaur (Defendant No.2). Late Defendant No.2 transferred two rooms out of the suit flat in the name of the wife of the Plaintiff. The other two rooms were transferred in the name of Gurmitsingh Bagga (Defendant No.3).

4. Eventually, Defendant No. 3 illegally sold the said two rooms to Defendant No. 6. As the latter threatened to dispossess the Plaintiff of the suit flat, the suit came to be instituted for a declaration that the suit

flat was a joint family property, the Sale Deed executed by Defendant No. 3 in favour of Defendant No. 6 was not legal and valid and for the consequential relief of injunction.

5. The Courts below found that the Plaintiff singularly failed to establish that the suit flat was the joint family property. Secondly, the Plaintiff had taken the benefit of disposition by deceased-Defendant No.2 in respect of the two rooms, out of the suit flat, and assailed the transfer of the remaining two rooms in favour of Defendant No. 6. The Plaintiff could not be permitted to approbate and reprobate.

6. Mr. Nitin Deshpande, the learned Counsel for the Appellant, submitted that the acquisition of immovable property by the head of the family in the name of a female member of the family is not uncommon and unknown to law. In the case at hand, Defendant No.2 was not absolute owner of the suit flat and, therefore, the transfer of suit flat by Defendant No.2 was legally infirm.

7. The submission does not merit any countenance. Since the suit flat was acquired under an instrument in the name of Defendant No. 2, a female hindu, the Courts below have justifiably returned a finding that Defendant No. 2 was the absolute owner of the suit flat. What exacerbates the situation is the acceptance of disposition by Sujankaur (D2) in the name of the wife of the Plaintiff. Having taken the benefit under the disposition made by Sujankaur (D2), the Plaintiff could not

have assailed the disposition of the part of the suit flat by Defendant No.2 in favour of Defendant No.3.

8. Even otherwise, not an iota of evidence could be placed before the Trial Court to demonstrate that Defendant No.2 was not the absolute owner of the said property. It could not be shown that the suit flat was acquired out of joint family property/funds. No case of blending of Defendant No.2's absolute property with the other joint family properties was pleaded, much less proved.

9. In the aforesaid view of the matter no interference is warranted in the impugned judgment and decree.

SECOND APPEAL (STAMP) NO. 4924 OF 2025

WITH

INTERIM APPLICATION (STAMP) NO. 14552 OF 2025:

10. Not on board. Upon mentioning taken on board.

11. After dismissal of the aforesaid suit, Respondent No. 6 in SA No. 554 of 2025, the transferee of the suit flat, instituted a suit for recovery of possession of the suit flat, *mesne profit* and consequential relief of injunction.

12. By a judgment and order dated 29th March 2018, the learned Judge, Court of Small Causes, was persuaded to decree the suit and direct the Defendant-Appellant herein to deliver possession of the suit

property to Respondent No. 6. The learned District Judge dismissed the Appeal as in the companion Appeal, the claim of the Appellant/Plaintiff was squarely negated. Thus, the Appeal against the decree passed in SCS No. 446 of 2013, came to be dismissed.

13. The fate of the Second Appeal (Stamp) No. 4924 of 2025 stood sealed with the dismissal of Second Appeal No. 554 of 2025, as it is found that the suit flat was the self-acquired property of Sujankaur (D2) and the Plaintiff could not lay claim over the suit property as a joint family property. Thus, the very substratum of the Appellant's case gets dismantled.

14. The decree impugned in the Second Appeal (Stamp) No. 4924 of 2025 is unassailable. Resultantly, Second Appeal (Stamp) No. 4924 of 2025 also deserves to be dismissed.

15. Second Appeal No. 554 of 2025 and Second Appeal (Stamp) No. 4924 of 2025 stand dismissed.

16. In view of the dismissal of the Second Appeal, Interim Applications also stand disposed.

[N. J. JAMADAR, J.]