



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 152 OF 2026

Shankar Bapur Jadhav
Since Decd. through LR's

..Appellants

Versus

Jagannath Vithal Jadhav & ors.

...Respondents

Mr. Shashank Shubham, for the Appellants.

CORAM : N. J. JAMADAR, J.

DATE : 1st APRIL 2026

ORDER :

1. Heard the learned Counsel for the appellants.
2. This appeal is directed against a judgment and decree dated 29th September, 2025 passed by the learned District Judge, Pune in Regular Civil Appeal No. 171/2015, whereby the appeal preferred by the appellants against a judgment and decree passed by the learned Civil Judge, Ghodnadi, Pune in Special Civil Suit no. 164/2007, came to be dismissed by affirming the said decree.
3. Jagannath – Respondent No. 1/plaintiff had instituted a suit seeking declaration, partition and separate possession of his share in the land admeasuring 350 Sq. mtrs. bearing Survey

No. 177 situated at village Shirasgav Kata, Tq. Shirur, Dist. Pune (the suit property).

4. It was the case of the plaintiff that, Bapu Jadhav - grandfather of the plaintiff and the defendants, was the original holder of the suit property. Bapu had two sons; Vithoba, the father of the plaintiff, and Shankar, the father of the defendants. Vithoba passed away in 1949. The other ancestral properties were already partitioned. However, the suit property being a *gavthan* land was kept joint. As the plaintiff was residing in the field, Shankar, the father of the defendants, got his name mutated to the property card of the suit land in the course of inquiry when the city survey was conducted at village Shirasgav Kata. In 2006, the plaintiff came to know about the mutation of the name of Shankar alone in the property card. Thus, the suit came to be filed seeking partition and separate possession of the plaintiff's share in the suit property.

5. It appears that, the stand of the defendants wavered. On the one hand, it was contended that, there was already partition of the joint family properties and the suit property came to the share of Shankar. On the other hand, it was claimed that, the suit property was self-acquired property of Shankar as he had purchased the suit property from one Ganpat Kadam.

6. On the basis of the documents especially the extract of the inquiry register prepared at the time of city survey, the learned Civil Judge returned the findings that, the suit property was a joint family property and the plaintiff had $\frac{1}{2}$ share therein. The appeal preferred by the appellants/defendants did not succeed.

7. Mr. Shashank Shubham, the learned Counsel for the appellants, would urge that, the Courts below have completely misconstrued the evidence. Since Shankar had purchased the suit property from Ganpat Kadam for a consideration of Rs. 50 only, the transfer was not required to be effected by a registered instrument. It could be made by the delivery of the property. Secondly, since a *sanad* was issued in the name of Shankar, the same constituted a document of title. The Courts below were thus in error in holding that the defendants failed to prove that the suit property was the self-acquired property of late Shankar.

8. The aforesaid submissions do not merit countenance. The inquiry register records that, the suit property was an ancestral property and on the basis of the statement made by Shankar, during the course of the inquiry, it came to be mutated in the name of Shankar. The Courts below were thus justified in recording the finding that, at the time of the city survey inquiry the plaintiff was not present and on the basis of the statement

of Shankar only, the suit property came to be mutated in the name of Shankar. The fact that, in the inquiry register the character of the suit property was stated to be ancestral thus assumes significance.

9. Secondly, the trial Court has categorically recorded that, the claim of the defendants was that Shankar had purchased the suit property from Ganpat Kadam for a consideration of Rs. 500/-, and, yet no instrument could be placed on record to evidence the said fact.

10. Mr. Shubham attempted to wriggle out of the situation by asserting that, the transfer of suit property was for a consideration of Rs. 50 only and not Rs. 500/-. Suffice to note that, the defendants failed to place on record an iota of evidence to show that, the alleged vendor of Shankar was ever the holder of the suit property. On the contrary, the evidence indicated that, before the city survey authorities the son of Ganpat Kadam had categorically declined that, Ganpat Kadam had sold the suit property to Shankar. The failure of the defendants to demonstrate that Shankar had acquired the suit property by way of purchase from Ganpat Kadam, thus, rendered the finding of the Courts below impeccable.

11. The bar of limitation sought to be pressed into service by Mr. Shubham is required to be appreciated in the light of the fact that, the Courts below on evaluation of evidence have recorded a finding that, the plaintiff became aware of the mutation of the suit property in the name of the defendants in the year, 2006. Moreover, being the co-owners, the principle of unity of possession and community of interest came into play. Thus, a clear case of ouster was required to be pleaded and proved. In the absence thereof, the courts below were justified in negating the challenge premised on the bar of limitation. Such findings of facts are not open for interference in an appeal under the regime of Section 100 of the Code, 1908.

12. The conspectus of the aforesaid consideration is that, no question of law, much less a substantial question of law, arises for consideration.

13. The Second Appeal thus stands dismissed.

[N. J. JAMADAR, J.]