



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.47/2025

APPELLANT : : Shankar Sambha Ingole
(Ori. Defendant) Aged about 70 Years,
on R.A. Occupation – Cultivation and Fishing,
R/o Ambedkar Ward, Shivaji Nagar,
Tah. Bhadravati, Distt. Chandrapur.

...VERSUS...

RESPONDENTS : Mahadeo Sambha Ingole (Dead)
(Ori. Plaintiffs) Legal Heirs.
On R.A.

1. Bhagwan Mahadeo Ingole
Aged about 52 years, Occupation – Labour.
2. Nagorao Mahadeo Ingole
Aged about 37 years, Occupation -
Labour.

Both Resident of Majri Colliery,
Tah. Bhadravati, Distt. Chandrapur.
3. Sau. Geeta Gangadhar Bhandakkar
Aged about 42 years, Occupation -
Household, R/o Rajura, Tah. Rajura,
Distt. Chandrapur.

Mrs. S.V. Dhawas, Advocate for appellant

CORAM : ROHIT W. JOSHI, J.
DATE : 06/01/2026

ORAL JUDGMENT :

1. The present appeal arises out of a suit for partition and separate possession, filed by the predecessor of present respondent late

Mahadeo Sambha Ingole against present appellant Shankar Sambha Ingole. The parties will hereinafter be referred to as “plaintiffs and defendant”. The plaintiffs and defendant are real brothers. It is not in dispute that the suit property, which is the land bearing Survey No.197 situated at village Palasgaon and another property bearing Survey No.40/1 situated at village Shivji Nagar were owned by late Sambha, father of plaintiffs and defendant. The plaintiffs had filed suit for partition and separate possession with respect to suit property bearing Survey No.197.

2. The defendant filed written statement opposing the suit for partition *inter alia* contending that land bearing Survey No.40/1 at Shivji Nagar was allotted to the share of the plaintiffs and the suit property was allotted to the share of defendant in an oral partition between brothers, which was arrived at during the life time of their father. The defendant claimed to be exclusive owner of the suit property on the basis of the said oral partition.

3. The learned Trial Court framed issues on the rival pleadings, on which parties led their evidence. The case of oral partition is disbelieved by the learned Courts. It is observed that the written statement is silent with respect to the date or even tentative period when the alleged oral partition was arrived at. The learned Court has thereafter referred to evidence of defendant’s witness No.1, who stated

that the oral partition was arrived at somewhere in the year 1972. It is not in dispute that land bearing Survey No.40/1 at Shivji Nagar was acquired by Western Coalfields Limited (WCL) in the year 1974. It is duly established that compensation in lieu of acquisition of the said land was received by the father Sambha. It is, however, not in dispute that under the scheme of granting appointment to individuals whose lands are acquired or to their family members, the plaintiff was granted employment by WCL, upon acquisition of the said land at Shivji Nagar. The learned Courts have found that the evidence brought on record by the defendant to make out a case of oral partition was grossly insufficient to record finding in that regard in favour of the defendant.

4. This Court has perused the pleadings and evidence along with findings recorded by both the learned Courts while decreeing the suit. It is correctly recorded that the date or tentative period during which the oral partition was allegedly arrived at is not mentioned in the written statement. It is also established that compensation in lieu of acquisition of land at Shivji Nagar was received by Sambha, father of the parties in the year 1974. This fact, as is rightly appreciated by both the learned Courts, is sufficient to discard the evidence of defendant's witness No.2 that the oral partition was arrived at in the year 1972. The learned Courts have rightly found that if the property acquired by WCL was allotted to the share of the plaintiff in oral partition in 1972, he

would have received compensation in lieu of acquisition of the said land, which was acquired in the year 1974. There is no evidence on record other than oral evidence to make out a case of oral partition. The oral evidence is disbelieved on overall consideration of the evidence. The findings of facts recorded by learned Courts are based on appreciation of evidence. The said findings are not perverse.

5. No substantial question of law therefore arises for consideration in the second appeal. Second Appeal is, therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)