



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

SECOND APPEAL NO.354 OF 2025

Netaji Lokaji Kene .Vs. Sau. Lila Krushnarao Adsad through POA Gopal Krushnarao
Adsad and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Devdutt Gawande, Advocate for appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 14/01/2026

1. The original defendant has filed the present appeal challenging the decree for partition and separate possession passed in favour of the plaintiff, who is his sister. The fact that the suit property is ancestral property is not in dispute. The relationship between the parties is also not in dispute. The defendant No.1 is brother and defendant No.2 is the sister of the plaintiff. The learned trial Court has granted decree for partition and separate possession to the extent of 1/3rd share in the suit property in favour of the plaintiff. The appeal preferred by the defendant No.1/brother is also dismissed.

2. The learned Advocate for the appellant, while assailing these concurrent decrees, contends that the son of the plaintiff has entered witness box in his capacity as power of attorney holder of the plaintiff and therefore, the suit ought to have been dismissed since the plaintiff herself did not enter the witness box. He places reliance on the

judgment of the Hon'ble Supreme Court in the case of *Rajesh Kumar ..vs.. Anand Kumar and Ors*¹.

3. Apart from this, the learned Advocate contends that the plaintiff had executed a relinquishment deed dated 13.07.2012, thereby relinquishing her share in the suit property in favour of defendant No.1.

4. As regards the first contention, it is apparent that the claim of the plaintiff is based on undisputed facts. Therefore, the fact that the plaintiff has not entered the witness box and has instead examined her son as her witness will not make any difference, inasmuch as it is not in dispute that the suit property is ancestral property and that the plaintiff is the sister of defendant Nos.1 and 2. The defence of defendant No.1 is that the plaintiff had relinquished her share in the suit property in his favour by executing the aforesaid relinquishment deed dated 13.07.2012. The fact that defendant No.1 claims absolute ownership on the basis of relinquishment by his sister i.e. the plaintiff, implies that the share of the plaintiff prior to the execution of relinquishment deed is admitted by defendant No.1.

5. The burden of proving the relinquishment deed is on the defendant No.1. The relinquishment deed is an unregistered document. It is obvious that it cannot be read as proof of transaction for want of registration, in view of Sections 17 and 49 of the Registration Act, 1908. Therefore, defendant No.1 cannot rely on the said document to prove his contention that the plaintiff has

1 AIR 2024 SC 3017

relinquished her share in the suit property. It is also worthwhile to state that, even if the document is read for a collateral purpose, namely for inferring ouster, the suit is filed within a period of 15 months approximately from the date of execution of the relinquishment deed.

6. It must also be stated that although relinquishment deed is marked at Exh.35, the document cannot be read in evidence, in view of full bench decision of this Court in the case of *Hemendra Rasiklal Ghia ..vs.. Subodh Mody*², wherein it is held that objection with respect to admissibility of document for want of registration cannot be raised at any stage of the proceedings even if the document is marked at exhibit during the course of evidence.

7. Therefore, in light of undisputed facts of the case, the claim for partition made by the plaintiff deserves to be decreed and is rightly decreed by the learned Courts.

8. In that view of the matter, no substantial question of law arises for consideration. Second Appeal is therefore **dismissed** with order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate