



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

SECOND APPEAL NO.18 OF 2026

Smt. Manglabai w/o Motiram Lahudkar and others .Vs. Shirish Kashinath Pachpande

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

Court's or Judge's Order

Mr. V.G. Lohia Advocate for appellants.

CORAM : ROHIT W. JOSHI, J.

DATE : 11/02/2026

1. The present appeal is preferred by the original defendants in Regular Civil Suit No.40 of 2011. The plaintiff and father of the defendant, deceased Motiram, had purchased the suit property jointly by registered sale deed. The sale deed is silent with respect to contribution made by the purchasers, namely, the plaintiff and deceased Motiram.

2. After the demise of Motiram, the plaintiff filed a suit for partition and separate possession with respect to the suit property jointly purchased by them. Vide judgment and decree dated 04.09.2014 in Regular Civil Suit No.40 of 2011, the learned Civil Judge Junior Division, Malkapur, passed a decree for partition and separate possession, granting half share in the suit property to the plaintiff. Aggrieved by the aforesaid decree, the defendants filed Regular Civil Appeal No.41 of 2014, which came to be dismissed by the learned District Judge-1, Malkapur, vide judgment and decree dated 05.04.2025.

3. The defence of the appellants/original defendants is that the plaintiff had contributed only a sum of Rs.1,25,000/- towards the sale consideration. It is their

case that Motiram, during his lifetime, had refunded this amount of Rs.1,25,000/- to the plaintiff. The defendants accordingly contended that Motiram was sole owner of the suit property and that the defendants have inherited the same from Motiram and had absolute owner of the suit property.

4. Admittedly, there is no documentary evidence to establish the case of repayment. Although three witnesses are examined, the learned Courts have not accepted the oral evidence of the said witnesses to accept the defence that the plaintiff was not a co-purchaser but had only lent the amount to Motiram for purchasing the property.

5. Mr. Lohia, learned Advocate for the appellant contends that the learned Courts have erred in not considering the defence of the defendants by wrongly placing reliance on Section 91 and 92 of the Indian Evidence Act, 1872. He contends that the bar under Sections 91 and 92 is attracted only when the nature of the transaction recorded in the document is not in dispute, however, in cases where the parties come up with a case that the transaction recorded in the document is not a genuine transaction and the real transaction is other than that recorded in the document, the bar under Section 92 will not be attracted. There is no dispute in the said legal position. The legal position in this regard is clarified by the Hon'ble Supreme Court in the case of *Smt. Gangabai w/o Rambilas Gilda ..vs.. Smt. Chhabubai w/o Pukharaji Gandhi*¹

1 (1982) 1 SCC 4

6. However, in the present case, there is no evidence on record to establish the transaction between the plaintiff and father of defendant was a loan transaction and that the name of plaintiff was inserted in the sale deed as joint purchaser only to secure repayment of alleged hand loan. Likewise, there is no documentary evidence in support of the contention of repayment. The oral evidence of defendants' witness is lacking in all material particulars with respect to date or even the tentative period and place on which the amount was allegedly repaid by the defendants to the plaintiff. There is no explanation for not obtaining receipt evidencing in repayment of alleged hand loan. The sale deeds in question are dated 23.06.1995 and 04.05.1996. It is difficult to digest that for an inordinately long period of 15 years, the defendants did not take steps to correct the title deed with respect to the suit property.

7. The findings recorded by the learned Courts on appreciation of the evidence do not appear to be perverse. Since re-appreciation of evidence is not permissible, in the considered opinion of this Court, no substantial question of law arises for consideration.

8. Second Appeal is therefore, **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)