



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

SECOND APPEAL NO.196/2025

APPELLANT : Nana Kisanrao Palatkar
(Ori. Defendant) aged 52 years, Occu : Barber
(ON RA) R/o Papal, Tq. Nandgaon-Khandeshwar,
Distt. Amravati.

...VERSUS...

RESPONDENT : Bandu Kisanrao Palatkar
(Ori. Plaintiff) Aged 60 years
(ON RA) Occu : Barber/Agriculturist
R/o Sai Nagar Amravati,
Tq. And Distt. Amravati.

Mr. A.S. Deshpande, Advocate for appellant
Mr. S.P. Panditkar, Advocate for respondent

CORAM : ROHIT W. JOSHI, J.
DATE : 28/01/2026

ORAL JUDGMENT :

1. Present second appeal arises out of judgment and decree dated 31/03/2022, passed by the learned Civil Judge, Junior Division, Nandgaon Khandeshwar, Distt. Amravati in Regular Civil Suit No.18/2014 and the judgment and decree dated 19/04/2025, passed by the learned District Judge-1, Amravati in Regular Civil Appeal No.75/2022.

2. The present second appeal has been filed by the original defendant. The respondent is the original plaintiff. The parties are real brothers. The plaintiff filed a suit being Regular Civil Suit No.18/2014,

inter alia contending that he is owner of the suit property, which is a house property situated at village Papad, Tq. Nandgaon, District Amravati. The plaintiff contends that the suit property was purchased by him vide sale-deed dated 23/06/1992 from his own funds and that the structure standing thereon is also constructed by him from his own funds. It is the case of the plaintiff that in the year 2002, he shifted from village Papad to Amravati and at the request of the defendant, who is his real brother, he permitted the defendant to occupy the suit property as a gratuitous licensee. The plaintiff contends that when he decided to shift back to the village, the defendant refused to vacate the suit property and therefore, he was required to institute suit for possession. The defendant opposed the suit contending that the suit property was acquired by all the family members and that merely sale-deed with respect to the same was got executed and registered in the name of plaintiff. According to the defendant, plaintiff was Karta of family. The defendant contended that the family members are engaged as barbers and the suit property was purchased and construction thereon was made from income derived by all family members working as barbers.

3. Based on rival pleadings, issues were framed. The parties led evidence in the light of those pleadings. The learned Trial Court has decreed the suit holding that the suit property was purchased in the name of plaintiff and that there was no evidence to suggest that the

same was purchased from common funds of the family, as contended by the defendant.

4. Aggrieved by the said judgment and decree, the defendant preferred First Appeal being Regular Civil Appeal No.75/2022. The learned first Appellate Court has dismissed the appeal, against which the present appeal is preferred. Notice was issued in the present appeal on 12/09/2025 on the following substantial question of law :-

Have the learned civil Courts below erred in taking into consideration the evidence on record in proper perspective, particularly the statement of plaintiff in the notice at Exh.56 that he was Karta of joint Hindu Family as also deposition of attesting witnesses in holding that the property was self acquired property of the plaintiff and not the Joint Hindu Family property ?

5. Mr. Deshpande, learned Advocate for the appellant-original defendant vehemently argues that the learned Courts have failed to appreciate the evidence on record in a right earnest, resulting a palpably incorrect findings. He contends that the findings are perverse and therefore, warrant interference at the hands of this Court. He contends that the contents of legal notice at Exh.56 are sufficient to establish the case of joint acquisition set up by the defendant. He also contends that evidence of the attesting witness to the sale-deed is not appreciated by the learned Courts.

6. Per contra, Mr. Panditkar, learned advocate for the respondent supports the findings. He contends that the findings are based on proper appreciation of evidence. His contention is that the learned Courts have rightly found that the plaintiff and defendant were not working together and that there is no material on record to infer joint income or pooling of funds for purchasing the suit property or making construction thereon.

7. Both the Courts have considered the evidence on record and have arrived at satisfaction that the evidence on record did not suggest that the parties and their family members were working together and had acquired the suit property from joint funds. It is also held that there is no evidence on record to suggest contribution of funds for purchase of suit plot and construction of building thereon.

8. Perusal of the evidence of defendant will demonstrate that he has stated that he was residing at Nagpur from where he was earning his income working as barber. It is further evident from the evidence that the plaintiff was working as a barber in the village. The defendant has stated that he had returned to the village from Nagpur in the year 1993. The suit property was purchased in the year 1992 itself. The defendant has also admitted that the work of barber is a work of personal skill. The evidence on record clearly suggests that both the brothers were working at different places, the plaintiff was working at

the village and the defendant was working at Nagpur. There is no evidence to suggest clubbing of their income or income of other family members for acquisition of property. It will be pertinent to state that the defendant has stated that apart from the plaintiff, he has two more brothers. The other brothers are not claiming right over the suit property. It will also be pertinent to mention that the father of the parties has expired in the year 2005 i.e. around 13 years after purchase of the suit property. In the year 1992, normally the father should be Karta of family. In any case, the plaintiff is not the eldest brother. The eldest brother is Sadashiv. Normally, if property is purchased by family members from common funds or joint nucleus then the conveyance is in the name of father or the eldest son. The defendant also admitted that he could not produce any evidence on record to establish contribution of funds for purchasing the suit property.

9. It needs to be stated that the father and eldest brother were alive when the property was purchased. Although it is contended by the defendant that suit property was purchased from joint funds in the name of plaintiff, no plausible reason is stated for purchasing the same in the name of plaintiff. As regards evidence of the attesting witness, he has stated in the cross-examination that the plaintiff Bandu was looking after affairs of the family. However, the period when Bandu was looking after the affairs of family is not brought on record. The question in this

regard is put to him after putting questions with respect to demise of the father. It is also pertinent to state that the witness has specifically stated that consideration for purchasing the suit plot was paid by the plaintiff. As regards notice at Exh.56, the said notice by itself is not sufficient to hold that the plaintiff was Karta of the family while the suit property was purchased in the year 1992.

10. For a moment, even if it is assumed that the plaintiff was Karta of the family, in the absence of any evidence regarding joint nucleus or the business being done jointly, it cannot be said that the suit property was purchased by the plaintiff in his capacity as Karta of the joint family and not in his individual capacity. It needs to be reiterated that the evidence on record clearly indicates that the parties were doing their business at different places and that there is no evidence to suggest joint income or even clubbing of funds. The findings recorded by both the learned Courts regarding ownership of property are findings of fact, which are arrived at by proper appreciation of evidence.

11. Substantial question of law therefore is answered in favour of the respondent/plaintiff and against the appellant/defendant. Second Appeal is, therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)