



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

SECOND APPEAL NO.360 OF 2025

APPELLANTS

Ori. Defendants
on R.A.

:- 1. Akshay s/o Naresh Bagade, Aged 28
years, Occ. Agriculturist,

2. Naresh s/o Bhimrao Bagade,
Aged 51 years, Occ. Agriculturist,
Both Residents of Kekatpur, Tq.
Amaravati, District Amaravati.

..VERSUS..

RESPONDENT

Ori. Plaintiff
on R.A.

:- Manda Dnyaneshwar Mate, Aged 56
years, Occ. Agriculturist, R/o.
Rahatgaon, Near Pragati Vidyalaya,
Amaravati, Tq. and District Amaravati.

Mr. S. B. Mohta, Advocate for Appellants.

Mr. Mukesh Randive, Advocate h/f. Mr. B. Chandwadkar, Advocate for the
Respondent.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **23.02.2026**

J U D G M E N T :

1) Heard finally with consent of learned advocates for
the respective parties.

2) The present Second Appeal is preferred challenging
judgment and decree dated 09.09.2019 passed by the learned

Joint Civil Judge, Junior Division, Amravati in Regular Civil Suit No.115 of 2018 and judgment and decree dated 24.06.2025 passed by the learned District Judge-2 & A.S.J., Amravati in Regular Civil Appeal No.44 of 2021.

3) The respondent is original plaintiff and appellants are original defendants. The parties will be referred as “plaintiff” and “defendants” hereinafter.

4) It is the case of the plaintiff that the suit property is a part of land bearing Gat No. 523, which was purchased by her grandfather, her father, and her paternal uncle, who is father of the defendant No.2. Plaintiff further contends that during the lifetime of the grandfather, the suit property which was totally admeasuring 2.10 HR., was partitioned between her father and father of the defendant No.2. According to her, both the brothers got equal share admeasuring 1.05 HR each in the said partition. The plaintiff further contends that her father was blessed with four children, three sons and one daughter. She contends that Pundlik is her real brother and other two sons are her stepbrothers. The contention of plaintiff is that the after the demise of Father, his 1.05 HR

land was inherited by his four children in which each of the three sons got 0.26 HR land and the plaintiff got 0.27 HR land. She has further stated that in the year 1983, her stepbrothers sold their share in the suit property, and in the said sale transaction, Pundlik was also joined as a co-vendor with respect to his share. The plaintiff's share to the extent of 0.11 H.R., was also included in the said sale deed. It is further contended that the father of defendant No.2 prevailed upon her brother Pundlik to execute the sale deed and appropriated the sale consideration with respect to share of Pundlik. The plaintiff has not challenged the said sale deed. However, she has claimed declaration of ownership and possession of 0.16 HR land which remained after the sale of 0.11 HR land.

5) The defendants opposed the suit by filing their written statement. It is their contention that during the lifetime of the grandfather, the property was partitioned between the two brothers i.e. father of plaintiff and father of defendant No.2. According to the defendants, plaintiff's father was allotted 0.89 HR land in the said partition and

remaining 1.21 HR land had fallen to the share of father of defendant No.2.

6) The learned Trial Court dismissed the suit, holding that the plaintiff had failed to prove that 1.05 HR land had fallen to the share of her father in the partition with father of defendant No.2.

7) Aggrieved by the aforesaid decree, the plaintiff preferred First Appeal being Regular Civil Appeal No. 44 of 2021. The learned First Appellate Court has allowed the said appeal. The learned First Appellate Court held that when the property was jointly purchased by the father and two sons undisputedly, the property was partitioned between the two sons, the presumption will be that the division of property was equal, meaning thereby that the father of plaintiff and defendant No.2 got 1.05 HR land each. The learned First Appellate Court held that the defendants had failed to prove that father of defendant No.2 got 1.21 HR land in the partition.

8) The learned advocate for the appellants/defendants argues that the sale deed with respect to share of plaintiff's

father was executed in the year 1983 itself whereby entire 0.89 HR land was sold. The learned advocate contends that after an inordinately long period of around 35 years, a suit for possession was filed claiming that in the partition between the father of plaintiff and defendant No.2, equal shares were allotted to each of them. The learned advocate draws attention to application filed by the appellants/defendants seeking permission to lead additional evidence and contends that the revenue record all throughout suggested that in the partition only 0.89 HR land was allotted to plaintiff's father.

9) I have perused the judgments delivered by both the learned Courts. The learned First Appellate Court has rightly drawn presumption that partition between two brothers will normally be equal. The learned Trial Court, without any foundation, accepted the case of defendants that in the partition between father of plaintiff and father of defendant No.2, the father of defendant No.2 got 1.21 HR land as against 0.89 HR land which had fallen to the share of father of plaintiff. There is no material in support of this finding

recorded by the learned Trial Court. The burden of proving that partition was not equal was on the defendants. The defendants have failed to discharge the said burden. Therefore, even after sale of 0.89 HR land 0.16 HR land remains with the plaintiff. The learned First Appellate Court has not committed any error in granting decree for declaration of ownership and possession with respect to 0.16 HR land in favour of the plaintiff.

10) As regards the application seeking permission to lead additional evidence, the only reason cited for leading additional evidence is that upon discussion with the learned advocate for the appellant appearing in the present Second Appeal, it was found that 7/12 extracts of the suit property will be necessary. The said explanation, with respect, does not satisfy the ingredients of Order XLI Rule 27 of the Code of Civil Procedure, 1908. In any case, the documents with respect to which evidence is sought to be led are 7/12 extracts from the year 1985 and onwards. It will be pertinent to state that the sale by brothers of plaintiff is of the year 1983. The father of plaintiff had died in the year 1982. The

partition was during lifetime of grandfather. The mutation entry which was recorded immediately after demise of grandfather will be relevant. However, 7/12 extracts of the year 1985 and onwards will not be relevant to decide the shares allotted to the brothers (father of plaintiff and father of defendant No.2) in the partition between them. The documents sought to be filed on record are not relevant for enabling the Court to decide the appeal meaningfully or more appropriately.

11) In the light of reasons, recorded above, no substantial question of law arises for consideration in the present Second Appeal. Second appeal is, therefore, **dismissed** with no orders as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..