



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

**SECOND APPEAL NO.377 OF 2025**

Pradip Madhukar Dandale .Vs. Rajendra alias Gajanan Madhukarrao and others

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

Court's or Judge's Order

Mr. R.A. Bagde, Advocate for appellant.

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

**DATE : 11/02/2026**

1. The present Second Appeal is filed challenging the judgment and decree dated 23.12.2021 passed by the learned Jt. Civil Judge Junior Division, Wardha in Regular Civil Suit No.93 of 2015 and judgment and decree dated 03.01.2025 passed by the learned District Judge-1, Amravati in Regular Civil Appeal No.50 of 2023 to the extent to which the learned Courts passed the decree for partition and separate possession with respect to suit property bearing Gat No.23.

2. The appellant in the present Second Appeal is original defendant No.1. The original plaintiff is real brother, who had filed a suit for partition and separate possession with respect to various properties. The defendant No.4 sister of plaintiff and defendant No.5 is son of predeceased sister. The defendant No.2 is their mother who expired while the civil suit was pending. The defendant No.3 is wife of defendant No.1.

3. The suit was partly decreed with respect to a property bearing Gat No.23, situated at Mouza Shahapur,

Tq. Warood, Dist. Amravati. The learned trial Court has held that the plaintiff, defendant No.1, defendant Nos.4 and 5 are entitled to 1/4<sup>th</sup> share each in the suit property bearing Gat No.23 and is accordingly passed a decree for partition and separate possession with respect to the same.

4. Sale deed dated 22.11.2002 with respect to the suit property bearing Gat No.23 stands in the name of plaintiff and defendant No.1. Perusal of the sale deed will demonstrate that at the relevant time, plaintiff was 26 years age and the defendant No.1/appellant was 24 years old.

5. The plaintiff claimed that suit property bearing Gat Nos.23 and 26 and Survey No.150/3 are joint hindu family property and he had half share therein along with defendant No.1. Plaintiff witness Gulabrao also stated that the aforesaid properties were ancestral properties of plaintiff and defendant.

6. The defendant No.1 filed appeal challenging the decree with respect to share granted in said property bearing Gat No.23 and 26. However, claim in appeal was restricted to Gat No.23. The defendant Nos.1 contended in the appeal that the said property ought have been held to be self-acquired property of plaintiff and defendant.

7. The learned First Appellate Court dismissed the appeal against which present Second Appeal is filed. The challenge in the present appeal is restricted to suit property bearing Gat No.23.

8. As stated above, as on the date of purchase of the suit property (Gat No.23), the plaintiff and defendant

No.1 in whose name the sale deed of the property stands did not have any source of income. The evidence on record does not suggest that plaintiff and defendant No.1 had any separate source of income at the relevant time.

**9.** Relationship between the parties is not in dispute. Even if it is assumed that properties are joint Hindu family properties as contended by the plaintiff, defendant No.1 as brother and defendant Nos.4 and 5 as sister and son of their predeceased sister will be entitled to 1/4<sup>th</sup> share in the ancestral properties including the suit property bearing Gat No.23 in view of Section 6 of the Hindu Succession Act as amended by Hindu Succession (Amendment) Act, 2005. Although it is stated that father Madhukarrao had executed a Will, the suit property bearing Gat No.23 is not covered the subject matter of Will. Therefore, the judgment and decree passed by the learned trial Court granting 1/4<sup>th</sup> share each to plaintiff and defendant Nos.1, 4 and 5 is just and proper.

**10.** Perusal of the judgment by the learned First Appellate Court will demonstrate that the argument of the defendant No.1 (Appellant) is that the said property was purchased by father of the parties in the names of his sons, plaintiff and defendant No.1. Since the property was purchased by the father in the name of his two sons, the father is held by the learned courts to be the true owner of the said property. The finding by the learned Courts in this regard cannot be faulted. It needs to be reiterated that contention of plaintiff and witnesses is also that Gat No.23

is ancestral property. It is not in dispute that the father has not executed any will with respect to the said properties. Since the defendant No.1/appellant himself contends that the property was in fact purchased by the father, no fault can be found with the decree passed by the learned trial Court granting a 1/4<sup>th</sup> share each to the four Class-I legal heirs of the deceased father in the said property. The learned First Appellate Court has rightly confirmed the said decree.

**11.** In view of the above, Second Appeal is **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

*C.L. Dhakate*