



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

SECOND APPEAL NO.110 OF 2024

Charandas S/o Laxman Bibe .Vs. Shyamrao S/o Laxman Bibe 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. A.S. Dhore, Advocate for appellant.

CORAM : ROHIT W. JOSHI, J.
DATE : 02/02/2026

1. The present Second Appeal is preferred challenging the judgment and decree dated 29.09.2022 passed by the learned Ad-hoc District Judge-1, Buldana, in Regular Civil Appeal No.44 of 2014, whereby the learned First Appellate Court has quashed and set aside the judgment and decree dated 26.02.2024 passed by the learned Joint Civil Judge Junior Division, Buldana, in Regular Civil Suit No.191 of 2005, by which the counter claim filed by the respondent Nos.1 and 2/original defendant Nos.1 and 2 was dismissed. It will be pertinent to state that the suit for declaration of ownership and injunction filed by the present appellant is also dismissed by the learned trial Court, however, subject matter of the present appeal is restricted to the decree passed in the counter claim.

2. The appellant/plaintiff claims to be ownership over the suit property on the basis of Will dated 15.07.2005 executed in his favour by his father, Laxman. The plaintiff

and defendants are real brothers and sister. Admittedly, none of the attesting witnesses to the Will are examined and no plausible explanation is offered for the same. In view of the aforesaid, the findings recorded by the learned Court that the plaintiff has failed to prove his Will and his exclusive ownership over the suit property appears to be just and proper.

3. As regards dismissal of counter claim, the learned trial Court has held that the defendant Nos.1 and 2 failed to prove ownership of their father, Laxman over the house property. As regards the agricultural land, it is held that the plaintiff has failed to prove that the suit property was their ancestral property.

4. As stated above, the defendant Nos.1 and 2 preferred appeal challenging the decree to the extent of dismissal of the counter claim. The learned First Appellate Court has allowed the said appeal, holding that the agricultural land was standing in the name of deceased Laxman, the father of the parties and since the Will was not proved, the parties to the suit who are children of the deceased, are entitled to equal shares in the suit property. As regards the house property, it is held that the evidence clearly suggested that the father was residing in the said house during his lifetime and accordingly decree for partition is granted with respect to the same.

5. The findings by the learned trial Court dismissing the counter claim are clearly unsustainable. Once it is held that the Will is not proved, decree for partition

ought to have been passed in the counter claim, since relationship between the parties is not in dispute. As regards agricultural land, even if it is assumed that the said land is not ancestral property, still the parties will be entitled to claim equal shares in the said land being Class-I legal heirs of their deceased father, Laxman. Even assuming the property to be ancestral property, all the children will have equal shares in view of the amendment to Section 6 of the Hindu Succession Act as introduced by the Hindu Succession (Amendment) Act, 2005.

6. The findings with respect to the ownership of the house property recorded by the learned trial Court are clearly unsustainable. Undisputedly, Laxman, the father of the parties, was residing in the suit house all throughout his lifetime. The interest of Laxman in the suit house is therefore inherited by the parties to the suit as a Class-I legal heirs. The Class-I legal heirs are therefore entitled to claim partition of the said property.

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

**CIVIL APPLICATION (CAO) NO.713 OF 2025 IN
M.C.A. ST. NO.386 OF 2025 IN
SECOND APPEAL NO.470 OF 2023**

Not on Board, on mentioning taken on Board.

CIVIL APPLICATION (CAO) NO.713 OF 2025

1. For the reasons mentioned in the application, application is **allowed**. Delay of 326 days caused in filing application for restoration of Second Appeal is condoned.

MISC. CIVIL APPLICATION St. NO.386 OF 2025

1. For the reasons mentioned in the application, application is **allowed**. Second Appeal No.470 of 2023 is restored to its original file.

SECOND APPEAL NO.470 OF 2023

1. The present Second Appeal arises out of concurrent decrees passed against the present appellant in Regular Civil Suit No.191 of 2005, decided by the learned Jt. Civil Judge Junior Division, Buldhana, vide judgment and decree dated 26.02.2014 and judgment and decree dated 29.09.2022 passed by the learned Ad-hoc District Judge-1, Buldhana, in Regular Civil Appeal No.43 of 2014, confirming the said decree by dismissing appeal preferred by the present appellant.

2. The appellant claims ownership over the suit property on the basis of a Will dated 15.07.2005 allegedly executed in his favour by his deceased father, Laxman. Admittedly, no attesting witness to the Will is examined. Perusal of the judgments clearly indicates that no explanation is offered for not examining any one of the attesting witnesses. Since attesting witness is not examined, the Will is not obviously proved. Since the Will is not

proved, the appellant cannot claim exclusive ownership over the suit property. Admittedly, deceased Laxman is survived by the plaintiffs and defendants as a Class-I legal heirs. Claim for declaration of exclusive ownership is therefore rightly rejected.

3. No substantial question of law arises for consideration, second appeal is therefore **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate