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

SECOND APPEAL NO. 464 OF 2017

1) Laxminarayan S/o. Dagadulal Somani
(Dead) through LRs.
(a) Nandkishor Laxminarayan Somani
Aged – 42 years,
(b) Sudhir Laxminarayan Somani
Aged – 46 years,
(c) Gopal Laxminarayan Somani
Aged – 44 years,
All 1(a)to (c) R/o. Near P.D.Jain,
Ansingh,
Tq & Dist. Washim
(d) Surekha Kishorkumar Chandak,
Aged– 54 years, R/o. Kanchan Vihar,
Near Ganpati Temple, P.O. Karanja
Tq. Karanja Dist. Washim
(e) Sujata w/o Omprakash Rathi,
Aged – 50 years, R/o. Near Gajanan
Hospital, Ansingh, Tq & Dist. Washim
(f) Shushma w/o Radheshyam Panpaliya
Aged – 48 years, R/o. Samarth
Apartment,
Snehal Nagar, Sewagram Road, Wardha
2) Gopal S/o. Laxminarayan Somani,
Aged 28 years, Occ : Agriculture
3) Nandkishor S/o. Laxminarayan Somani,
Aged 26 years, Occ : Agriculture
R 2 and 3 R/o. Ansing,
Tq. and Dist. Washim.

.. Appellants
(Original Defendant)

Versus

1) Dipchand S/o. Dagadulal Somani
Aged – 61 years, Occ : Agriculture,
R/o. Professor Colony, Washim, Dist.
Washim
2) Dr. Lalchand Dagadulal Somani,
Aged about 58 years, Occ : Doctor,

.. Respondents
(Original Plaintiffs)

R/o. Main Road, Gondia,
Presently residing at Professor Colony,
Washim

Mr. N. R. Saboo, Advocate for appellants.
Mr. S. P. Bhandarkar, Advocate for respondents.

CORAM : ROHIT W. JOSHI, J.

RESERVED ON : APRIL 06, 2026
PRONOUNCED ON : APRIL 15, 2026

JUDGMENT

(1) The present second appeal is preferred against the judgment and decree dated 21/03/2017, passed by learned Principal District Judge, Washim in R.C.A. No.128/2006, whereby the learned first appellate Court has reversed the judgment and decree dated 02/11/2006 passed by the learned Joint Civil Judge Junior Division, Washim in R.C.S.No.113/2004. The appellants in the present appeal are legal representatives of deceased defendant No.1 and original defendants No.2 and 3. The respondents are original plaintiffs.

(2) The plaintiffs had filed a suit for declaration, permanent injunction and alternatively for possession of the suit property which is an agricultural land bearing Gat No.114 admeasuring 4 Acres and 4 Gunthas and Gat No.64 admeasuring 5.54 H.R. situated at village Sawali, Tahsil and District Washim. The suit property was sold by the

plaintiff No.1 to plaintiff No.2. The plaintiffs and defendants are real brothers. The father of the parties Late Dagadulal had six sons and four daughters. It is the case of plaintiffs that during his lifetime, Dagadulal had effected partition of the properties of the family in the year 1958. This partition is oral partition according to the case of the plaintiffs. The plaintiffs claimed that somewhere around the year 1974, the defendant No.1 started raising dispute with respect to said partition of the year 1958. The plaintiffs contended that the defendant No.1 executed a document titled as agreement on 28/12/1974 under which he had relinquished property that had fallen to his share in the 1958 partition against house property at village Sawali, 100 Qtl. Cotton, 40 Qtl. Jowar, 15 gunny bags of Toor crop, 12 cattles and bullock cart and also confirmed the partition of the year 1958.

(3) The plaintiffs contended that partition of the year 1958 was also admitted by the defendant No.1 under the document dated 28/12/1974 executed by him.

(4) It is the case of the plaintiffs that oral partition arrived at in the year 1958 was acted upon by effecting mutation entries in the names of respective parties to whom the properties were allotted in the partition.

(5) The plaintiffs further claimed that the defendant No.1 had also in terms admitted the partition of the year 1958 in an earlier litigation with one Nansa Gulabsa Jain. The plaintiffs contended that Nansa Jain had filed a suit for recovery of money against Dagadulal and for execution of the said decree bearing Regular Darkhast No.03/1991 was filed by Nansa Jain against Dagadulal. Some property was attached in the said execution. The plaintiffs stated that the defendant No.1 had filed objection vide M.J.C.No.17/1994 stating that the property under attachment was purchased by him from his individual earnings after separating from his father under a partition which was arrived at in the year 1958.

(6) The defendant No.1 denied the partition of the year 1958. He also denied the document dated 28/12/1974. It is his contention that the said document was got executed from him by his father by exercising undue influence and coercion. With respect to the objection filed in the proceedings initiated by Nansa Jain, defendant No.1 contends that the said objection was raised in order to protect the family properties. The defendants thus disputed allotment of the suit property to the share of plaintiff No.1 and contended that sale deed executed by plaintiff No.1 in favour of plaintiff No.2 did not confer any title upon the plaintiff No.2. The defendant No.1 contended that he was in possession of the suit property as a co-owner. He further

claimed that if it is held that partition had taken place then it must be held that he acquired ownership over the suit property by adverse possession.

(7) The learned trial Court recorded a positive findings with respect to oral partition of the year 1958. However, the learned trial Court discarded the document dated 28/12/1974 on the ground that it is an unregistered document. The learned trial Court recorded that the defendant No.1 had proved his possession over the suit property for long and had become owner thereof by way of adverse possession. In view of such findings the suit came to be dismissed.

(8) Being aggrieved by the said decree, the plaintiffs preferred R.C.A.No.128/2006. The learned first appellate Court has allowed the appeal by passing a decree declaring plaintiff No.2 to be owner of the suit property and directing the defendant No.1 to deliver possession of the suit property to the plaintiff No.2. The said reversing decree is the subject matter of challenge in the present second appeal.

(9) The appeal came to be **admitted** vide order dated 15/12/2017 on the following substantial questions of law :-

i. Whether reversal of the decree of the trial Court dismissing the suit as barred by limitation is in accordance with law ?

ii. *Whether the appellate Court was legally justified in taking into consideration the document at Exh. 67 Relinquishment Deed that was not registered ?*

As to Substantial Question of Law No.(ii) :-

ii. Whether the appellate Court was legally justified in taking into consideration the document at Exh. 67 Relinquishment Deed that was not registered ?

(10) The agreement dated 28/12/1974 is marked as Exh.67. The defendant No.1 has not disputed his signature on the said document. The defendant No.1 has stated that the said document was signed by him under coercion of deceased Dagadulal, father of the parties. Perusal of the findings of the learned first appellate Court demonstrates that the defendant No.1 admitted to have purchased the stamp paper on which the document at Exh.67 is scribed. The learned first appellate Court also recorded that although the document is referred as relinquishment deed, in essence it is not a deed of relinquishment, but a document confirming earlier partition of the year 1958. The learned first appellate Court held that the document was admissible in evidence and was duly proved. The learned trial Court has discarded the said document for want of registration. The learned trial Court has held that the said document is not a memorandum of partition, but a deed of relinquishment. Both the learned advocates

supported the findings recorded by the learned Courts in their favour, whereas the contention of Mr.Saboo, learned advocate for the appellants is that the learned trial Court rightly found the document at Exh.67 to be a relinquishment deed, Mr.Bhandarkar, learned advocate for respondents contends that the document is a mere confirmation of earlier oral partition.

(11) I have perused the document at Exh.67 with the able assistance of the learned advocates. The document in fact comprises of two parts, both of which are separable.

(12) Initially, the defendant No.1 has confirmed the oral partition effected in the year 1958. He has further confirmed that the parties were placed in separate possession of their respective shares pursuant to the said partition. He has declared that he will not raise any dispute with respect to the said partition of the year 1958. Thereafter, the defendant No.1 refers to properties allotted to his share in the partition of the year 1958 which are mentioned in clause (b) of the said document. He has declared that he does not have any right or interest over all the properties except the properties enumerated in clause (b). To this extent the document at Exh.67 is certainly a declaration confirming the earlier oral partition of the year 1958. The document does not require registration, so far as the aforesaid aspect

is concerned. The document is admissible in evidence to this extent although it is not registered to this extent.

(13) The second part of the document pertains to relinquishment. The defendant No.1 has relinquished his rights over the properties enumerated in clause (b) of the agreement in lieu of residential house at village Sawali, 100 Qtl. Cotton, 40 Qtl. Jowar, 15 gunny bags Toor crop, 12 cattles and bullock cart. This part of the document is certainly a deed of relinquishment or exchange. The defendant No.1 has given up his right over properties enumerated in clause (b) of the agreement, which according to him had fallen to his share in the partition of the year 1958, in lieu of a house property and other movables mentioned above. To the extent of the properties enumerated in clause (b) of Exh. 67, the document at Exh. 67 is in the nature of a document of demise and would require compulsory registration under Section 17 of the Registration Act. To this extent, the document is inadmissible in evidence in view of bar under Section 49 of the Registration Act.

(14) However, the suit properties are not a part of clause (b) of the document at Exh.67. I had made a query in this regard to both the learned advocates. Mr.Bhandarkar, the learned advocate for the respondent asserted that the suit properties are not properties

enumerated in clause (b) of the document at Exh.67. Mr. Saboo, the learned advocate for the appellants did not dispute the statement.

(15) In view of the aforesaid, the document at Exh.67 can be read in evidence in the present suit, since the suit property is not a subject matter of relinquishment or exchange by the defendant No.1. The properties enumerated in clause (b) of the said document are not subject matter of the suit. The document, therefore, can be read in evidence as admission of the oral partition effected in the year 1958 by the defendant No.1.

<u>As to Substantial Question of Law No.(i)</u> :-

i. Whether reversal of the decree of the trial Court dismissing the suit as barred by limitation is in accordance with law ?

(16) The learned trial Court has accepted the case of adverse possession set up by the defendant No.1. The learned first appellate Court has however, reversed the said findings. It must be borne in mind that the suit property was property of the family, which according to the plaintiffs had come to the share of plaintiff No.1 in the partition of the year 1958 and the plaintiff No.1 has sold the suit property to the plaintiff No.2. The plaintiff No.2 claims ownership over the suit property on the basis of the said sale deed. As against this, the defendant No.1 has denied the oral partition of the year 1958. The

defendant No.1, also contends that the property is held by family members as co-owners. Since defendant No.1 has denied the oral partition of the year 1958 and claimed to be in cultivating possession of the suit property, the only inference that can be drawn is that, even according to case set up by the defendant No.1, he was in possession of the suit property as a co-owner and not as exclusive or absolute owner.

(17) A perusal of the written statement filed by defendant No.1 would demonstrate that the plea of adverse possession has been raised in the alternative. In order to establish a case of adverse possession, the person claiming adverse possession must admit the title of the true owner. The defendant No.1 is disputing exclusive title of plaintiff No.1 and thereafter, the plaintiff No.2. Perusal of written statement will also demonstrate that the defendant No.1 has not asserted that the plaintiffs were aware that he was claiming to be exclusive owner of the suit property and therefore, his possession was adverse to the interest of the plaintiffs. It will be appropriate to refer the written statement of the defendant No.1 with respect to adverse possession; relevant portion of the written statement is extracted herein below :-

> *"**Para No. 16 :** That, there is no partition in between the family of the Dagadulal regarding estate and therefore the possession of Laxminarayan could be said that of co-owner though he was individually cultivating the said land. Thus, it is crystal clear that there is no partition in the family of the Dagadulal Somani and his*

all legal heirs.

…….. It is submitted that in the alternative if the Hon'ble Court holds that the estate of the joint family partition and if the suit field came to the share of Deepchand Somani as alleged then it is submitted that in that circumstance the possession of the deft no.1 shall be adverse to the Deepchand Somani etc. As this deft is in exclusive and absolute possession of the said land against the whole world including the plaintiffs. And in such circumstance being deft no.1 is in exclusive possession of the suit fields since 1961 and therefore the suit is time barred and hence it is not tenable."

(18) Perusal of the written statement of the defendant No.1 would demonstrate that he has failed to plead that his possession was hostile to the knowledge of plaintiffs. In that view of the matter, the possession of the defendant No.1 cannot be termed as adverse. This aspect is properly taken into consideration by the learned first appellate Court. The learned trial Court has erred in law in construing long-standing possession as hostile possession, thereby holding that defendant No.1 had perfected his title over the suit property by way of adverse possession.

(19) In view of the reasons recorded above, both the substantial questions of law are answered against the appellants and in favour of the respondents.

(20) Accordingly, the second appeal is dismissed. Costs shall follow the cause.

[ROHIT W. JOSHI, J.]

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