



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

SECOND APPEAL NO.428 OF 2022

APPELLANTS
ON R.A.

- :- 1) Datta Namdeo Chavre,
a/a 51 years, occ. Cultivator,
(Ori. defendant no.1)
- 2) Sau. Sushila Marotrao Jatarkar,
a/a 64 years, occ. Household work,
(Ori. defendant no.2)
- 3) Sau. Rajas Hanwantrao Chavhan,
a/a 60 years, occ. Household work
(Ori. defendant no.2)
- 4) Sau. Devkabai Bharatrao Narwade,
a/a 56 years, occ. Household work,
(Ori. defendant no.4)
- 5) Sau. Prabhabai Bharatrao Narwade,
a/a 52 years, occ. Household work,
(Ori. defendant no.6)
All r/o Mahagaon, Tq. Mahagaon, distt.
Yeotmal.

..VERSUS..

RESPONDENTS
ON R.A.

- :- 1) Vithhal s/o Namdeo Chavre,
a/a 67 years, occ. Cultivator,
r/o Gunj, Tq. Mahagaon, Distt. Yeotmal,
(Original Plaintiff)
- (Dead th LR's.) 2) Sau. Renuka Pandurang Kalane,
a/a 54 years, occ. Cultivator,
r/o Mahagaon, Tq. Mahagaon,



distt. Yeotmal,
(Ori. defendant no.5)
Legal heir of respondent No.2

**RESPONDENT
NO.**

- 2a) Vidya Panjab Karpe,
Aged about 35 Years, Occu. Housewife,
R/o Ambhoda, Tah. Mahagaon, Dist.
Yavatmal.
- 2b) Omprakash S/o Pandhurang Kalane
Aged about 29 Years, Occu. Agriculturist,
R/o Moti Nagar, Near water ATM, Pusad,
Tah. Pusad, Dist. Yavatmal.
(Amendment carried out as per Court
order dated 14.10.2024)

Mr. V.N. Patre, Advocate for Appellants.
Ms A.M. Raut, Advocate for Respondent No.1.
Mr. P.A. Jibhkate, Advocate for respondent No.2(b).

CORAM : ROHIT W. JOSHI, J.

DATE : 24/02/2026

ORAL JUDGMENT :

1. The present appeal is preferred by defendant Nos.1, 2, 3, 4 and 6 in Regular Civil Suit No.12 of 2007, filed by the present respondent No.1 seeking partition and separate possession of agricultural land bearing Survey No.200, admeasuring 18 Acre 12 R, situated at Village Sawana, Tah.Mahagaon, Dist. Yavatmal.



2. Vide order dated 29.03.2023, following substantial questions of law were framed :-

“(I) Whether both the Courts below erred in law in not considering the effect of consent deed Exh.50 dated 08/05/2003 on the nature of suit land as to whether it was the exclusive property of defendant no.1/appellant no.1 and not available for partition?”

“(II) Whether the both the Courts below erred in law in not excluding from partition the land sold by defendant no.1/appellant no.1 to the extent of 1 H 23 R out of suit land field survey no.200 as respondent no.1/original plaintiff gave consent for that sale on 08/05/2003 vide document of consent Exh.50 dated 8/5/2003?”

3. The plaintiff is brother of defendant Nos.1 to 6. The defendant No.7, mother of the parties, has expired during the pendency of the litigation. The plaintiff has filed a suit for partition and separate possession, claiming that the suit property had fallen to the share of the father in the partition between plaintiff, defendant No.1 and their father, deceased Namdeo, on 02.05.1974. The defendant No.1 does not dispute the partition dated 02.05.1974. However, it is his case that although in the said partition, the suit property had fallen to the share of the father, subsequently, in the year 1986, there was an exchange of properties *inter se* between defendant No.1 and his father, deceased Namdeo. By virtue of the said exchange, the suit property was received by the plaintiff in



exchange of land bearing survey Nos.184/2 and 139, which were transferred from the defendant No.1 to the father. The appellant Nos.2 to 5 who are original defendant Nos.2 to 4 and 6 are sisters of plaintiff and defendant No.1, support the case of defendant No.1.

4. The learned trial Court has passed a decree for partition and separate possession with respect to the suit property, thereby granting 1/8th undivided share to the plaintiff and defendant Nos.1 to 7 in the suit property. The defence of defendant No.1 with respect to exchange of property is discarded on the ground that the alleged exchange is not evidenced by any document and that the Transfer of Property Act, 1882 does not permit oral exchange. Indeed, apart from Exh.56, which is an entry in the register of mutation, there is no evidence to suggest that the lands were exchanged between the father and defendant No.1, as claimed. There is, however, a document dated 08.05.2003 at Exh.50 titled as “consent letter”, which is executed by the plaintiff and defendant Nos.2 to 6, stating that the suit property was given by the father to the defendant No.1. It is stated in the said document that the executants, namely plaintiff and defendant Nos.2 to 6, did not claim any right, title or interest in the suit property since it was given by the father to the defendant No.1. The said document is discarded by



the learned trial Court on the ground that it is not a registered document. It is held by the learned trial Court that the document is in the nature of a deed of relinquishment and since it is not registered, it is not admissible in evidence.

5. Aggrieved by the decree for partition passed by the learned trial Court, the defendants preferred appeal being Regular Civil Appeal No.08 of 2016. The learned First Appellate Court has dismissed the said appeal vide judgment and decree dated 10.05.2022. The learned First Appellate Court has recorded finding that the case of exchange of properties set up by defendant No.1 could not be accepted because although the properties allotted to the father in the partition of the year 1974 were mutated in the name of defendant No.1, the properties which had fallen to the share of defendant No.1 in the said partition were not mutated in the name of the father. The learned First Appellate Court confirmed the decree passed by the learned trial Court by dismissing the appeal.

6. At the outset, it must be stated that exchange is a mode of transfer of property which must necessary be created by a written registered document as per Section 118 read with Section 54 of the Transfer of Property Act. The alleged exchange is admittedly not in



accordance with the said provisions. Perusal of the consent letter at Exh.50 does not indicate that the properties were exchanged by the father and defendant No.1 as contended by the defendant No.1. Moreover, it is also seen that, contrary to his defence, the defendant No.1 treated himself to be owner of the property which has fallen to his share in the partition of the year 1974 and accordingly sold property 1.21 H.R. land in Survey No.139 vide sale deed dated on 01.11.2005.

7. The contention of Mr. V.N. Patre, learned Advocate that the exchange was accepted by the father inasmuch as he has sold a property which has fallen to the share of the defendant No.1 in the partition of the year 1974 is also incorrect. As it is apparent from the judgments by the learned First Appellate Court or trial Court, the said property was sold by the father acting as guardian of defendant No.1 and not as owner of the same. The evidence on record does not show that the alleged oral transaction of exchange, stated to be arrived at in the year 1986, was acted upon. The defendant No.1 has acted contrary to the alleged exchange by continuing to claim ownership over the suit property fallen to his share in the partition of the year 1974.

8. It is not in dispute that father has died intestate. It is



not in dispute that the plaintiff and defendants are Class-I legal heirs of the father. In that view of the matter, the substantial question of law framed vide order dated 29.03.2023 will have to be answered against the appellants/defendants and in favour of respondent No.1/plaintiff. Second Appeal is therefore **dismissed**.

(ROHIT W. JOSHI, J.)