



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.679 OF 2023
WITH
INTERIM APPLICATION NO.17404 OF 2023
IN
SECOND APPEAL NO.679 OF 2023

Shekhar Shankar Joshi
V/s.

...Appellant
(Orig. Defendant)

Anita Arun Bhawe

...Respondent
(Orig. Plaintiff)

Mr. Drupad Patil *with Mr. Suyash Sule for the Appellant.*

Mr. Rohit Joshi *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 12 AUGUST 2026.

Judgment pronounced on: 20 AUGUST 2026.

JUDGMENT:-

1) By this Second Appeal, the Appellant-Defendant has challenged judgment and decree dated 29 April 2023 passed by the District Judge-3, Raigad-Alibag in Civil Appeal No.11 of 2020 thereby partly setting aside the decree of the Trial Court dated 9 January 2020 in Special Civil Suit No.131 of 2015. The Trial Court had partly decreed the Suit declaring that the Plaintiff and the Defendant have one-half share in the suit

property and had made a preliminary decree for effecting partition of the suit property.

2) The Appellate Court has redetermined the shares of the Plaintiff and the Defendant by partly allowing the Appeal and has held that the Plaintiff has one-third share and Defendant has two-third share in the suit property by accepting validity of Relinquishment Deed dated 25 March 2013 executed by mother-Shakuntala in favour of the Defendant. Despite partly succeeding in the Appeal, the Defendant has filed the present Second Appeal challenging grant of one-third share in the suit property to the Plaintiff.

FACTS

3) The Plaintiff and the Defendant are siblings. Land bearing Gat No.27 admeasuring 21.5 R and House No.201 located in Gat No.27 are the '**suit properties**'. The two suit properties alongwith land bearing Gat No.28 were ancestral properties of late Narayan Vinayak Joshi. Narayan Joshi had two sons-Shankar and Waman. Shankar passed away on 27 January 1991 leaving behind him, his wife-Shakuntala, son-Shekhar (Defendant) and daughter-Anita (Plaintiff). Waman has a son-Suhas. After death of Narayan Joshi and Shankar Joshi, names of Shakuntala, Shekhar and Anita alone were mutated in respect of the two suit properties and property at Gat No.28 vide mutation entry No.306 dated 30 March 1991. Based on affidavit submitted by the Plaintiff-Anita, her name was removed from revenue records in respect of the suit properties as well as Gat No.28. Thereafter a partition was effected vide registered Deed of Partition dated 25 June 1993 between Shakuntala and Shekhar on one side and Suhas Waman Joshi on the other. Under the Partition

Deed, Shakuntala and Shekhar agreed for granting land bearing Gat No.28 admeasuring 28.3 R in favour of Shekhar while retaining land at Survey No.27 and house located thereon with themselves. The partition recorded Plaintiff-Anita relinquishing her rights in respect of both the properties bearing Gat Nos.27 and 28. This is how the land bearing Gat No.28 went to the share of cousin-Suhas Waman Joshi, whereas Defendant and his mother-Shakuntala started claiming right in respect of Gat No.27 as well as house constructed thereon. On 25 March 2013, mother-Shakuntala executed Relinquishment Deed in favour of Defendant-Shekhar. This is how the Defendant started claiming exclusive right in respect of Gat No.27 and the house constructed thereon.

4) The Plaintiff is the sister of Shekhar and started demanding share in the suit properties. She thereafter filed Special Civil Suit No.131 of 2015 in the Court of Civil Judge Senior Division, Alibag for declaration, perpetual injunction, partition and separate possession of the suit properties. The Plaintiff claimed one-half share in the suit properties comprising of Gat No.27 and house constructed thereon. She also challenged the Relinquishment Deed dated 25 March 2013 executed by mother-Shakuntala in favour of Shekhar as not binding on her share. She also sought *mesne* profits of Rs. 2,00,000/- per year from the date of institution of the Suit. The Suit was resisted by the Defendant-Shekhar by filing written statement claiming that the Plaintiff had relinquished her rights orally, which was effected in the revenue records through an affidavit. The Defendant-Shekhar thus claimed sole right to own and possess both the suit properties. Based on the pleadings, the Trial Court framed issues. The Plaintiff examined herself and relied on several

documents. The Defendant also examined himself in addition to examining Mr. Sarvesh Chintaman Joshi as DW2. He also relied on several documents. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the Suit holding that the suit properties are ancestral properties of the Plaintiff and the Defendant. It held that Relinquishment Deed dated 25 March 2013 was obtained by the Defendant by playing fraud on his mother-Shakuntala. It was further held that the Plaintiff has one-half share in the suit properties. It rejected the defence of the Defendant that the Plaintiff had orally relinquished her right on 22 July 1991. The Trial Court accordingly declared that the Plaintiff and the Defendant have one-half share in the suit property being land at Gat No.27 and constructed house thereon. The Trial Court directed effecting of partition of undivided estate of agricultural land bearing Gat No.27 by sending the decree to the collector. The Trial Court also directed that the Plaintiff and the Defendant have one-half share in the house property constructed on land bearing Gat No.27. The Trial Court further directed that Relinquishment Deed dated 25 March 2013 is null and void and not binding on the Plaintiff. The Plaintiff's prayer for perpetual injunction was however rejected. The Trial Court also directed for holding of enquiry for *mesne* profit under Order XX Rule 12 of the Code of Civil Procedure, 1908 (**the Code**).

5) The Defendant-Shekhar filed Regular Civil Appeal No.11 of 2020 challenging Trial Court's decree dated 9 January 2020. The Appeal has been partly allowed by the Appellate Court. The Appellate Court has reversed the finding of the Trial Court with regard to the validity of Relinquishment Deed dated 25 March 2013 and held the same to be legal

and binding on the Plaintiff. Since mother-Shakuntala's share in the suit properties is held to have been validly transferred on Defendant-Shekhar, the Appellate Court altered the share of the Plaintiff and the Defendant in the suit properties by holding that the Plaintiff is entitled to only one-third share whereas the Defendant is entitled to two-third share in the suit properties. Accordingly, the Appellate Court has directed issuance of decree for effecting partition in respect of the suit properties at Gat No.27.

6) The Appellant is aggrieved by the concurrent findings recorded by the Trial and the first Appellate Court about existence of some right of the Plaintiff in the suit properties and has accordingly filed the present Appeal. The Plaintiff had also filed Second Appeal No.157 of 2024 challenging denial of half share in the suit properties and upholding validity of Relinquishment Deed dated 25 March 2013. However, by order dated 12 August 2026, this Court has dismissed the Second Appeal preferred by the Plaintiff.

QUESTIONS OF LAW FORMULATED

7) The present Second Appeal has been admitted by formulating following substantial questions of law:

- i) Can a coparcener orally relinquish his/her rights in the ancestral property in favour of another coparcener or whether it is necessary to execute a written and/or registered document to evidence such relinquishment ?

ii) Whether oral relinquishment can be presumed merely on the basis of a document signed for deletion of name of coparcener from revenue records, when, the document is silent about any relinquishment?

iii) If a coparcener does not object to grant of share in an ancestral land to another coparcener forming part of different family unit, whether such act ipso facto leads to a presumption that he/she has also relinquished his/her share in the land *qua* member of his/her family unit ?

SUBMISSIONS

8) Mr. Drupad Patil, the learned counsel appearing for the Appellant-Defendant submits that the Trial and the Appellate Courts have grossly erred in recognising rights of the Plaintiff in the suit properties. He submits that the Plaintiff has expressly relinquished her rights in the suit properties. That the relinquishment was oral, which is confirmed by way of an affidavit dated 22 July 1991. That by the said affidavit, the Plaintiff had relinquished her right in respect of both the lands at Gat Nos.27 and 28. That the Plaintiff had ultimately accepted and acknowledged relinquishment *qua* Plot No.28 and therefore she cannot conveniently question the relinquishment *qua* Plot No. 27. That in the 1994 partition, it was specifically reflected that the Plaintiff had relinquished her right *qua* the suit property. That in cross-examination, Plaintiff had specifically admitted that she had no objection to the partition effected in the year 1994. That the case involves relinquishment by Plaintiff in respect of the suit properties orally which

is followed by affidavit. That oral relinquishment is by way of family arrangement where the Plaintiff was married and residing separately. That the affidavit was executed only to give shape to the oral partition already effected. That conduct of the Plaintiff in maintaining silence from 1991 till filing of the Suit in the year 2015 speaks volumes about acquiesce in relinquishment made by her. In law, it is permissible to relinquish /release interest in the joint family property by a female coparcener without a written instrument. In support, he relies on judgments of this Court in *Ramdas Chimna V/s. Pralhad Deorao*¹ and *Uma Madhav Agaskar V/s. Manorama Motiram Dandekar and Ors.*² He therefore submits that the Trial and the Appellate Courts have grossly erred in holding contrary to the settled position that relinquishment can never be by way of oral arrangement. On above broad submissions, Mr. Patil would pray for setting aside the orders passed by the Trial and the Appellate Courts.

9) Mr. Joshi, the learned counsel appearing for the Respondent-Plaintiff opposes the Appeal. He submits that no interference is warranted in the concurrent findings recorded by both the Courts about absence of relinquishment by the Plaintiff. He submits that there is absolutely no evidence on record for interfering in concurrent findings on absence of oral relinquishment. That for relinquishment in respect of the immovable property, execution and registration of a formal document is mandatory as held by this Court in *Gangaram Sakharam Dhuri since deceased through LR Vishnu and Others V/s. Gangubai Raghunath Ayare and others*³. That the affidavit does not speak of or

1 AIR 1965 BOM 74

2 Second Appeal No.562 of 2003 decided on 30 November 2023.

3 2007 SCC OnLine BOM 144

refer to oral relinquishment in any manner. That the affidavit executed merely for deletion of names from revenue records cannot lead to presumption of relinquishment of share by the Plaintiff. That the affidavit is executed merely for effecting mutation entry for fiscal purposes. That the Plaintiff was deliberately kept out of partition effected in the year 1994 and agreement between the parties to the Partition Deed about the Plaintiff relinquishing her share would not bind the Plaintiff in any manner. He submits that the affidavit is secured by the Defendant from his sister/Plaintiff by misrepresentation. That in any case, there is no reference to relinquishment in the said affidavit. He takes me through the findings recorded by the Trial and Appellate Courts in support of his contention that absence of relinquishment by the Plaintiff is well supported by evidence on record. He prays for dismissal of the Appeal.

CONSIDERATION OF SUBMISSIONS

10) The dispute between siblings is in respect of the right of inheritance in respect of the land bearing Gat No.27 and house constructed thereon. As a matter of fact, one more land bearing Gat No.28 was also a part of ancestral property. The Plaintiff and Defendant are children of Shankar Narayan Joshi, who also had a brother by name-Waman Narayan Joshi. While Shankar has two children (Plaintiff-Anita and Defendant-Shekhar), Waman Narayan Joshi has only one son -Suhas Waman Joshi. Being joint family property, Suhas Waman Joshi was also entitled to inherit a share in the same. By way of registered partition effected on 25 June 1993, Suhas Waman Joshi has accepted land bearing Gat No.28 admeasuring 28.3 R as his share in the ancestral properties.

Thus, the share of Suhas Waman Joshi was carved out by registered partition deed. What remained is land at Gat No.27 admeasuring 21.5 R and a house constructed thereon, which are the suit properties in Special Civil Suit No.131 of 2015 instituted by Plaintiff-Anita Bhave. In her Suit, she claimed one-half share in both the suit properties. By the time the Suit was filed, a Relinquishment Deed dated 25 March 2013 was executed by mother-Shakuntala in favour of the Defendant. The Plaintiff believed that the Defendant got the Relinquishment Deed dated 25 March 2013 executed by the mother by misrepresenting her. She accordingly sought a declaration in the Suit for cancellation for Relinquishment Deed dated 25 March 2013.

11) The Trial Court proceeded to declare the Relinquishment Deed dated 25 March 2013 as null and void and not binding on the Plaintiff. The Appellate Court has however, reversed the said finding. Reversal of the said finding by the Appellate Court was subject matter of challenge in the Second Appeal No.157 of 2024 filed by Plaintiff-Anita, which has been dismissed by this Court. Thus, the position that now stands is that the Relinquishment Deed dated 25 March 2013 is valid and binding on the Plaintiff.

12) Both, the Trial and Appellate Courts have recognised right of the Plaintiff to inherit a share in both the suit properties in capacity as daughter of Shankar Narayan Joshi. The Defendant-Shekhar does not really dispute right of the Plaintiff-Anita to inherit a share in the ancestral property. However, he took a defence that the Plaintiff had relinquished her share. Both the Courts have concurrently rejected the defence of the Defendant.

13) Before me, Appellant-Defendant contends that both the Courts have erroneously rejected the case put forth by him of oral relinquishment of right to claim share by Plaintiff in the joint family property. It is also contended that the Affidavit buttresses the case of oral relinquishment. I accordingly proceed to answer the three substantial questions of law formulated while admitting the Appeal.

QUESTION No. 1

14) Faced with a situation that there is no written document recording relinquishment of share of the Plaintiff, Mr. Patil has contended that share in ancestral land can always be abandoned without executing the written instrument. He has relied on judgment of this Court in **Ramdas Chimna** (supra). The case involved the question as to whether it was open to the mother to relinquish her interest in the joint family property orally when the joint family property consisted of immovable property and when value of her share therein was more than Rs.100. Referring to various provisions of the Transfer of Property Act, 1882, this Court held that when law requires that there should be instrument in writing and that the instrument must be registered, the transfer can only be effected in that manner. However, it is held that where no writing is required by the Transfer of Property Act or by other law, the transfer may be made orally. By referring to judgment of Calcutta High Court in **Imperial Bank of India v. Bengal National Bank, Limited**⁴ this Court held that a right to recover a share in the immovable property may be relinquished orally and without an instrument in writing. This Court thereafter referred to

⁴ (1930) I.L.R. 58 Cal.136

provisions under Section 17 of the Registration Act, 1908 and held that there was nothing in the Registration Act, which required any particular transaction to be recorded in writing. This Court further held that there is nothing in the Transfer of Property Act or any other law that requires a mere relinquishment of interest of the immovable property must be in writing. This Court therefore held that oral relinquishment by mother of her interest in joint family properties in favour of her two sons was valid and effective in law. This Court held in paragraphs 5 to 9 as under:-

5.The question then arises whether it is open to the mother to relinquish her interest in the joint family properties orally when the joint family properties consist of immoveable properties like the suit fields and the value of her share therein is more than Rs.100/- . Mr. Deshpande drew my attention to the case reported in Dattatraya Govind v. Narayan Gangaram, AIR 1936 Nag 186. It was held by Vivian Bose J. in that case that

"except in the case of partition among the members of a joint Hindu family, where the unities of possession, interest, title and time are complete and except in the case of entrance to a religious order involving complete renunciation of the world, no person can divest himself of interests which have once vested in him by a mere disclaimer. A title once vested can be divested only by a recognized conveyance or one of the other means allowed by law. It cannot pass by admission, relinquishment, or disclaimer when the law requires a deed."

6. This case does not lay down that relinquishment cannot be made orally. All that it says is that the title once vested can be divested only by a recognized conveyance or by one of the other means allowed by law. It further says that the title once vested cannot pass by relinquishment when the law requires that relinquishment can only be made by a deed or by an instrument. Transfer of Property Act clearly recognizes oral transfers. Section 9 of the Act provides that "a transfer of property may be made without writing in every case in which a writing is not expressly required by law." It follows, therefore, that an oral transfer of property is rule unless there is law which expressly requires that it should be made in writing. Transfer of Property Act contains various transfers where writing is necessary. Under S. 54, a sale of tangible immoveable property of the value of Rs.100/- or upwards, or of a reversion or other intangible thing is required to be made only by a registered instrument. Under Section 59, a writing is necessary in the case of a simple mortgage by deposit of title-deeds where the principal sum secured in

Rs.100/- or upwards. Under Sec. 107, a lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, is required to be made in writing. Under Section 123, a gift of immoveable property can only be made by a writing. Under Sec. 130, all transfers of actionable claims have to be made by writing and, under Sec. 118, all exchanges are subject to the same rules as are applicable to sales. Thus, when the law requires that there should be an instrument in writing and that instrument must be registered, the transfer can only be effected in that manner. But where no writing is required by the Transfer of Property Act or any other law, the transfer may be made orally. Mr. Deshpande is unable to point out any statute which requires that the relinquishment by the mother of her interest in the joint family property, when the property consists of immoveable property and the value of the share therein exceeds Rs. 100/- can only be made in writing or by an instrument registered.

(7) In *Imperial Bank of India, v. Bengal National Bank, Ltd.* Rankin C.J. said that partition, release and surrender are all forms of transfer but that so far as the Transfer of Property Act is concerned, they come under no restrictions. **A right to recover a share of immoveable property may be relinquished orally and without an instrument in writing.**

(8) Mr. Deshpande, however, drew my attention to the provisions of Section 17 of the Registration Act. There is nothing in the Registration Act or the provisions of Section 17 thereof, which requires any particular transaction to be recorded in writing. That Act requires only that when certain transactions are so recorded, the writing shall be registered. **There is nothing in the Transfer of Property Act or any other law that I am so far aware which requires that a mere extinguishment of an interest in the immoveable property shall be in writing. The relinquishment by Bainabai of her interest in the joint family property was merely abandonment of her interest in the joint family property in favour of her two sons. Such a relinquishment or abandonment of interest in the joint family property, even though it consists of immoveable properties and is of the value of Rs.100/- and upwards, can be effected without a written instrument, though if one is executed, it would undoubtedly require registration under Section 17 of the Registration Act, Gauri Bai v. Gaya Bai, AIR 1927 Nag. 44.**

(9) **Thus, the oral relinquishment by Bainabai of her interest in the joint family properties in favour of her two sons after the death of Ramji was valid and effective in law.** Since the time of that relinquishment she ceased to have any interest in the joint family properties. The learned Additional District Judge was in error in taking the view that an oral relinquishment, even if proved, would not divest Bainabai of her interest in the joint family properties.

(emphasis and underlining added)

15) Ratio of the judgment in *Ramdas Chimna* (supra) has been followed by this Court in *Uma Madhav Agaskar V/s. Manorama Motiram Dandekar and Ors.*⁵ (supra) in which it is held in paragraph 7 as under:

7. In so far as the submission of the learned advocate for the appellant that such oral relinquishment is not permission as such relinquishment requires registered document is concerned, the issue is no longer res integra in view of the judgment of the Apex Court in *Ramdas Chimna v. Pralhad Deorao & Ors.* reported in AIR 1965 Bombay 74. **This Court held that relinquishment by a female of her interest in the joint family property was merely abandonment of her interest in the joint family property, even though it consists of immovable properties and is of value of Rs.100/- onward can be effected without written instrument. It is only if such relinquishment is evidenced by a written document, such document would require registration.**

(Emphasis added)

16) On the other hand, Mr. Joshi has relied upon judgment of this Court in *Gangaram Sakharam Dhuri* (supra) in support of his contention that execution of written document and registration thereof is mandatory for relinquishment. However, closer scrutiny of ratio of the judgment in *Gangaram Sakhararam Dhuri* (supra) would indicate that the judgment actually militates against the contention of Mr. Joshi. This Court has held in paragraphs 22 and 23 as under:

22. Perusal of the evidence, both oral and documentary, shows that the existence of intention on the part of the Plaintiff and the second to fifth Respondents of relinquishing their share in the property of their father has not been established. The Plaintiff and fourth Defendant have admitted their thumb impression and signature respectively on the document. However, they have denied the contents and the fact that they attended City Survey Office. The other two sisters have not even admitted the execution of document. The witness Kunte has at highest proved that the writing is prepared by him. **However, he has not proved that the document is executed**

⁵ Second Appeal No.562 of 2022, decided on 30 November 2023

by the sisters. Hence, the alleged writing is not at all proved in accordance with law of evidence.

23. The submission of the learned counsel appearing for the original Plaintiff was that the alleged relinquishment was in respect of an immovable property which was certainly worth more than Rs.100/- and therefore, in view of section 17 of the Indian Registration Act, 1908, the document was a compulsorily registerable document. The submission of the learned counsel for the second Defendant was based on the decision of the Division Bench of this Court reported in A.I.R (30) 1943 Bombay 397A.I.R (30) 1943 Bombay 397A.I.R (30) 1943 Bombay 397 in the case of *Mahalingayya Basappayya Ullagaddimath Vs. Sangayya Chennayya Ullagadiimath*. Relying upon the said decision, he submitted that there was no necessity of executing any writing recording the surrender or relinquishment and even registration was not mandatory. The Division Bench in the said decision has held that the renunciation of interest in the family property can be effected by coparceners by an expression of intention to that effect and no formality is necessary. The Division Bench was dealing with a case where renunciation was by a coparcener. In case of a hindu coparcenery, the shares of coparceners are always fluctuating and they take shares by survivorship. In the present case we are dealing with share acquired by the daughters in the self acquired property of their father by intestate succession. Therefore, the said decision will have no application to the facts of the case and section 17(1) of the said Act of 1988 will certainly apply. I have already held that there is nothing on record to prove that the Plaintiff and third to fifth Defendants intended to relinquish or surrender their shares in the father's property in favour of Vishnu. As pointed out earlier, even in the recitals in the Sale Deed executed by the said Vishnu, there is no reference to any such relinquishment. Reliance is placed on the entries made in the City Survey Record in which the relinquishment is recorded. The city survey record is nothing but a record of rights and therefore entries in the city survey record will not by itself effect the relinquishment. Therefore, the Plaintiff and third to fifth Defendants had one sixth undivided share each in the property after the demise of their father and one fifth share each on the demise of their mother. Similarly, Vishnu had one sixth share in the property after demise of the father. One more aspect of the case is very important. The alleged relinquishment even according to the case of the 2nd Defendant was made in 1967 when Sunderabai was alive. Therefore, even assuming that there was a valid relinquishment by the sisters, Vishnu did not acquire share of his mother and therefore after demise of the mother, the sisters acquired a share in the undivided share of the mother. Therefore, Vishnu never became full owner of the suit property. On the date of execution of the Sale Deed in favour of the second Defendant, Vishnu was not the full owner as his mother was alive at that time who was holding 1/6th share.

(emphasis and underlining added)

17) Thus, in ***Gangaram Sakharam Dhuri*** (supra) this Court made reference to Division Bench judgment in ***Mahalingayya Bassappayya Ullagaddimath V/s. Sangayya Chennayya Ullagadiimath***⁶ in which it is held that there is no necessity of executing a writing recording the surrender or relinquishment and even registration is not mandatory. The Division Bench held renunciation of interest in the family property can be effected by coparceners by an expression of intention to that effect and no formality is necessary. However, in ***Gangaram Sakharam Dhuri*** (supra) the learned Single Judge of this Court distinguished the judgment of the Division Bench of this Court in ***Mahalingayya*** (supra) and held that in case of a Hindu coparcenary, the shares of coparceners are always fluctuating and they take shares by survivorship. However, in the case before the learned Single Judge, the issue involved shares acquired by the daughters in the self-acquired property of their father by intestate succession. In the facts of that case which involved relinquishment of share by daughters in the self acquired property, this Court held in ***Gangaram Sakharam Dhuri*** (supra) that provisions of Section 17(1) of Registration Act, 1908 would apply. In the present case, however, the issue is about relinquishment of right to claim share in ancestral property by the Plaintiff and such relinquishment can be done orally without an instrument in writing as held in ***Ramdas Chimna*** (supra), ***Mahalingayya*** (supra) and ***Uma Madhav Agaskar*** (supra).

18) In the light of the above discussion, the first substantial question of law can be answered in the negative and by holding that it is not

⁶ AIR(30) 1943 BOM 397

always necessary to execute a written document or to register the same for evidencing the relinquishment of interest in the joint family properties in favour of other coparceners. Such relinquishment or abandonment can be done even orally by expressing an intention of doing so. This however would be restricted only to relinquishment or abandonment of right to claim a share in the joint family properties and would have no application in respect of share in self-acquired property through intestate succession.

QUESTION No. 2

19) Coming to the second question of presumption of relinquishment on the basis of the affidavit, it is the defence of the Defendant that affidavit was effected to buttress or support oral relinquishment by Plaintiff-Anita. In the written statement, the Defendant contended that after death of the father, share inherited by the Plaintiff was orally relinquished by her in favour of the Defendant and that in support of such oral relinquishment, she executed an affidavit. The Plaintiff did not dispute execution of the affidavit. However, she pleaded in paragraph 6 of the Plaint that she was made to execute the affidavit by the Defendant for the purpose of procuring fruit trees from Government. It was averred by the Plaintiff in paragraph 6 of the Plaint as under:

सदर फे . फा . नोंद ३०६ ने वादीचे नाव लागले नंतर प्रतिवादीने शेतकी खात्याकडून फळझाडे मिळण्यासाठी वादीचे प्रतिज्ञापत्रात सामायिक मालक म्हणून आवश्यकता आहे असे वादीला सांगितले व वादीला अलिबागला बोलावून तहसीलदार अलिबाग यांचे कार्यालयात नेवून प्रतिज्ञापत्र फळझाडे मिळण्यासाठी तयार केले आहे असे सांगून वादीची त्यावर सही घेतली. वादीने हि प्रतिवादी हा सख्खा भाऊ आहे तो फसवणार नाही असा विश्वास प्रतिवादीवर ठेवून प्रतिज्ञापत्रावर सही केली. महत्वाचे म्हणजे प्रतिवादीने वडील ते प्रतिज्ञापत्र वाचून दाखवलेले नाही व वाचण्यास दिले नाही.

20) On the other hand, the Defendant pleaded the defence of oral relinquishment by the Plaintiff in the written statement in paragraphs 13 and 14 as under:

१३. दावा परिच्छेद ६ मधील मजकुर विपर्यस्त स्वरूपाचा आहे. बादी हिने स्वखुशीने दावा मिळकतीमधील तीला वडीलांचे निधनानंतर प्राप्त झालेला अविभक्त हिस्सा या प्रतिवादीचे लाभात तोंडी सोडून दिलेला होता आणि अशा तोंडी सोडलेल्या हिश्याच्या हकीगतीच्या पुष्टीकरीता वादी हिने स्वखुशीने प्रतिज्ञापत्र केले सदर प्रतिज्ञापत्र महसुल विभागाकडे सादर झालेनंतर वादी हीचे नाव कमी करण्याकरीता मौजे आक्षी हक्क नोंद ३२९ दिनांक २७/०९/१९९९ करण्यात आली. आक्षी हक्क नोंद ३२९ मध्ये आक्षी गट क्रमांक २७ आणि गट क्रमांक २८ या दोनही मिळकती समाविष्ट आहेत. आक्षी गट क्रमांक २८ मधुन सोडलेल्या हक्काकरीता प्रतिज्ञापत्र योग्य आणि कायदेशीर आणि आक्षी गट क्रमांक २७ करीता प्रतिज्ञापत्र फसवुन घेतले म्हणुन बेकायदेशीर हे अनाकलनीय आहे. वादी ही उच्च शिक्षित आणि पंचायत समिती आणि जिल्हा परिषदेमध्ये नोकरी करुन निवृत्त झालेली आहे. वादी हीला शासकीय कामकाजाच्या पध्दतीची आणि कागदपत्रांची उत्तम जाण आहे. अशा परिस्थितीत वादी हीने प्रतिज्ञापत्र न वाचता सहि केली अथवा तीची प्रतिवादी याने फसवणुक केली हे विधान खोटे आणि आपमतलबी आहे.

१४. दावा परिच्छेद ७ मधील मजकुर विपर्यस्त स्वरूपाचा आहे. वादी प्रतिवादींची आई शकुंतला हिने दावा मिळकतीमधील तीचा हक्क या प्रतिवादीचे लाभात नोंदणीकृत हक्कसोडपत्राने सोडून दिलेला आहे ही बाब वादीला या प्रतिवादी समक्ष सांगितलेली होती. त्यामुळे शकुंतला हिचा निधनाचे वेळी कोणताही हक्कहितसंबंध दात्रा मिळकतीमध्ये राहिलेला नव्हता याची पूर्ण माहिती वादीला होनी सबब दावा परिच्छेद ७ मधील कथने काल्पनीक आणि रचनात्मक अशी ओहत. आईचे हयातीमध्ये आणि मृत्युनंतरही वादी दावा घरामध्ये येत असे. या प्रतिवादीने वादीची कथिही फसवणुक केलेली नाही.

21) Thus, there is serious dispute between the parties about oral relinquishment by the Plaintiff in favour of the Defendant. However, execution of affidavit is admitted by her though she contended that she was made to execute the affidavit upon a misrepresentation.

22) Perusal of the affidavit would indicate that the same contains no reference to any oral relinquishment. In her affidavit, the Plaintiff has stated that “तरी (१) सुहास वामन जोशी (२) शकुंतला शंकर जोशी (३) शेखर शंकर जोशी (४) अनिता अरुण भावे अशी गावचे रेकॉर्डला नावे लावली आहेत व तरी त्या प्रॉपर्टीला लावलेले माझे नाव कमी व्हावे त्याबद्दल माझी हरकत नाही.” Thus, by the

affidavit, all that the Plaintiff requested was deletion of her name from revenue records pertaining to land bearing Gat Nos.27 and 28. The affidavit makes no reference to any oral relinquishment. It does not state that deletion of name of the Plaintiff be effected in pursuance of any oral relinquishment. The Affidavit was executed only for the purpose of deletion of name of Plaintiff from the revenue records. The issue for consideration is whether oral relinquishment can be presumed merely on the basis of a document signed for deletion of name of coparcener from revenue records, when the document is silent about any such relinquishment?

23) As observed above, affidavit by itself does not effect relinquishment of share by the Plaintiff. The Affidavit also does not state that in the past the Plaintiff had relinquished her share in the ancestral property. The affidavit is silent about alleged relinquishment. The affidavit merely records consent of the Plaintiff for deletion of her name from ancestral property bearing Gat Nos.27 and 28.

24) The background, in which affidavit was executed by the Plaintiff-Anita on 22 July 1991, also needs to be appreciated. At that time, there was claim of cousin-Suhas Waman Joshi in respect of one-half share in the ancestral property bearing Gat Nos.27 and 28. She apparently has no qualms about granting a share to Suhas Joshi. In the Plaint, she pleaded the case of misrepresentation while executing the affidavit. In my view, however, it is not necessary to go into the issue of misrepresentation as both the Courts have not accepted the theory of the Plaintiff. It would therefore be appropriate to take contents of the affidavit as they stand. If there is no reference to any oral relinquishment in the affidavit, the same

would have the effect only of granting of permission for deletion of name of the Plaintiff from revenue records. Beyond this, the affidavit is not of much significance for presuming oral relinquishment by the Plaintiff.

25) While answering the first substantial question, I have held that relinquishment of share by the coparcener in a joint family property can be effected orally and in absence of an instrument in writing. However, in such a case, effecting of oral relinquishment must be proved by person asserting the same. In the present case, the Defendant took the defence of oral relinquishment and therefore the burden was on the Defendant to prove effecting of such oral relinquishment by the Plaintiff. Beyond his bare words, he did not lead any evidence to prove any such relinquishment. I have already reproduced above averments in the written statement relating to oral relinquishment. The averments are totally vague. The written statement does not contain any particulars of date, place and time, etc., when such relinquishment was allegedly made by the Plaintiff. The Defendant did not examine any witness in whose presence the relinquishment was allegedly made by the Plaintiff. Apart from examining himself, the Defendant also examined Shri Sarvesh C. Joshi as DW2, who is a distant cousin of the Plaintiff and the Defendant and possibly occupant of neighbouring land bearing Gat No.29/1. He was examined only to prove that mother-Shakuntala was in perfect health one month before her death. His evidence was thus relevant only for proving genuineness of mother's relinquishment deed. Thus, the Defendant did not examine any witness to prove oral relinquishment by the Plaintiff.

26) Recognizing legal effect of oral relinquishment is a concept different than proving the factum of oral relinquishment. Beyond pleading vaguely that after death of father of the Plaintiff, the Plaintiff had orally relinquished her share for Defendant's benefit, there is absolutely no iota of evidence to establish such oral relinquishment. Affidavit of evidence of the Defendant is reproduction of written statement, which again is bereft of any details about date, time and place of effecting or expressing oral relinquishment.

27) In my view, therefore, oral relinquishment cannot be presumed merely on the basis of affidavit effected for the purpose of deletion of name of the Plaintiff from the revenue records. Mere consent granted for deletion of name of the Plaintiff from revenue records by way of affidavit (*without referring to any relinquishment*) does not mean that she intended to effect relinquishment. Intention on the part of the Plaintiff to consciously relinquish her share in favour of the Defendant has not been established in any manner. The second question can therefore be answered by holding that oral relinquishment cannot be presumed merely on the basis of a document signed for deletion of name of coparcener from revenue records, when the document is silent about any relinquishment.

QUESTION NO. 3

28) Coming to the third question formulated above, it is sought to be contended by Mr. Patil that since the Plaintiff has accepted relinquishment *qua* land bearing Gat No.28, it needs to be presumed that there is relinquishment by her *qua* land bearing Gat No.27 as well. This

contention is raised essentially to get over the position that there is no evidence to establish oral relinquishment by the Plaintiff. Therefore, it is contended on behalf of the Defendant that since the Plaintiff has accepted oral relinquishment *qua* share of Suhas Joshi (Gat No.28) she cannot deny oral relinquishment in respect of remaining land falling in the share of mother-Shakuntala and brother-Shekhar. Mr. Patil has taken me through cross-examination by the Plaintiff in which her attention was drawn to registered partition deed dated 5 May 1994 and she stated that ‘मी सदर वाटणीपत्र दावा दाखल करणेपूर्वी वाचलेले आहे. या वाटणीपत्रातील मजकुराबाबत माझा आक्षेप नाही.’ Based on the above deposition, Mr. Patil has contended that the Plaintiff cannot admit relinquishment *qua* part of ancestral property while selectively denying relinquishment *qua* the other property. In my view, contention sought to be raised on behalf of the Defendant flows out of misreading of statements made by the Plaintiff in her cross-examination. After the above quoted statement, Plaintiff immediately clarified that ‘सदर वाटणीपत्रातील परिच्छेद क्र. ३ मधील "लिहून देणार पैकी १ याना एक मुलगी असून ती विवाहित आहे व तिने सदर मिळकतीवरील हक्क सोडून दिलेला आहे त्यामुळे तिचा आता या मिळकतीशी काहीही संबंध राहिलेला नाही" हा मजकूर मान्य नाही’. Thus, Plaintiff expressly denied the suggestion of abandonment of right to claim share in the suit property. She has undoubtedly expressed her consent for grant /allotment of land bearing Gat No.28 to Suhas Waman Joshi. This is repeatedly stated by her in her cross-examination, and the statements are consistent with the stand of the Defendant as well. However, from those statements in the cross examination, one cannot draw a presumption that Plaintiff had any intention for giving away the right to claim share in land bearing Gat No.

27. The arrangement in the partition envisaged balance land bearing Gat No.27 as well as house constructed thereon falling to the share of heirs of Shankar Narayan Joshi i.e. mother-Shakuntala, Son-Shekhar and daughter-Anita. To this limited extent, the Plaintiff has admitted correctness of the Partition Deed and consented for not claiming any share in Gat No.28.

29) Statements made in the cross-examination by the Plaintiff cannot constitute any oral relinquishment of share in the ancestral properties by the Plaintiff either in respect of Gat No.28 or in respect of Gat No.27. Statements merely admit consent *qua* Suhas Joshi's entitlement to land bearing Gat No.28. Here the issue is not about relinquishment effected by the Plaintiff in favour of cousin-Suhas. It is not the pleaded case of Defendant that the so-called oral relinquishment applied in respect of entire ancestral property comprising of Gat Nos. 27 and 28. Averments in paragraph 13 of the written statement have already been reproduced above. The said averments only claim alleged oral relinquishment in respect of suit properties comprising of land at Gat No.27 and house property thereon. Contrary to what is pleaded in the written statement, Mr. Patil now attempts to canvas before me that there is relinquishment by the Plaintiff in respect of the land at Gat No.28. Since there is no pleading to this effect, there is no question of accepting oral relinquishment *qua* Gat No.28.

30) Admitting share of cousin in joint family property is a concept distinct from the concept of abandoning her own share by the Plaintiff in such properties. Admitting share of another coparcener cannot be confused with the concept of relinquishment of share in the joint family

property. Thus, the oral relinquishment by the Plaintiff *qua* land bearing Gat No.28 has not been established and therefore, there is no question of presuming any such oral relinquishment *qua* the suit properties. Third substantial question therefore deserves to be answered in the negative.

CONCLUSION

31) Conspectus of the above discussion is that the Defendant-Appellant has thoroughly failed to prove oral relinquishment in respect of Plaintiff's share in the suit properties. The Trial and the Appellate courts have rightly upheld rights of the Plaintiff in the suit properties. The Trial Court had committed an error of declaring one-half share of the Plaintiff in the suit properties by holding mother's Relinquishment Deed dated 25 March 2013 as illegal. The Appellate Court has corrected that error by holding that mother has validly relinquished her one-third share in favour of the Defendant. The Defendant thus has two-third share in the suit properties and accordingly Plaintiff's one-third share has rightly been upheld.

32) The questions formulated while admitting the Appeal are answered as under:

(i) It is permissible to orally relinquish share in the ancestral property by a coparcener in favour of another coparcener in absence of a written instrument and in absence of registration.

(ii) Oral relinquishment cannot be presumed on the basis of a document created for the purpose of deletion of name from

revenue records, especially when such document by itself does not effect relinquishment nor refers to any oral relinquishment.

(iii) Mere expression of consent for allotment of share in the ancestral property in favour of one of the coparceners forming part of different unit does not automatically amount to expression of relinquishment of share in the joint family property falling to the share of claimant's own unit.

ORDER

33) I therefore find no reason to interfere in the impugned order passed by Appellate Court, which appears, to my mind, to be unexceptional. Second Appeal is accordingly **dismissed**. Considering the facts and circumstances of the case, the parties shall bear their own costs in the appeal.

34) In view of disposal of the Second Appeal, nothing survives in the Interim Application and the same is disposed of.

[SANDEEP V. MARNE, J.]