

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 450 OF 2014

Bhagirathi Haribhau Yadav & Ors. ... Appellants

Versus

Dnyaneshwar Vishnu Kate & Ors. ... Respondents

**WITH
CIVIL APPLICATION NO. 971 OF 2017
WITH
CIVIL APPLICATION NO. 972 OF 2017
WITH
INTERIM APPLICATION NO. 10554 OF 2024
IN
SECOND APPEAL NO. 450 OF 2014**

Mr. Sanjeev Gorwardkar, Senior Advocate, a/w Mr. Ratnesh M. Dube i/by Ms. Rutuja Ambekar for the Appellants.

Mr. Anil Anturkar, Senior Advocate, a/w Mr. Atharva Date, Mr. S. G. Kudle, Mr. Kishor Jadhav, Ms. Nishi Agarwal, Mr. Siddharth Yadav and Mr. Sarosh Krishnan i/by Mr. S. G. Kudle for Respondent No.10.

Mr. Sagar Kursija i/by Samrat K. Shinde for Applicants in CAS/971/17 and CAS/972/17.

**CORAM : MANISH PITALE, J
RESERVED ON : 20th NOVEMBER 2025
PRONOUNCED ON : 27th JANUARY 2026**

JUDGMENT :

. The original plaintiffs are appellants in this appeal and they are dissatisfied with the first Appellate Court i.e. the District Judge-5, Pune, only partly allowing their appeal by judgment and order dated 6th February 2014. The Small Causes Court and Court of Joint Civil Judge Senior Division, Pune had dismissed the suit of the appellants in its entirety. The first Appellate Court partly

decreed the same. But, according to the appellants, the suit ought to have been allowed in its entirety, particularly in the context of land at survey No. 119/2B at Mauje Pimple Saudagar, Tal. Haveli, Dist. Pune.

2. The proceedings in the present case were contested by original defendant No.10, who is respondent No.10 in this appeal, while the other defendants failed to contest the suit. The four original plaintiffs are the sisters of the original defendant No.1, while defendant No.2 is his wife and defendant Nos.3 and 4 are their children. Defendant Nos.5 to 20 were all purchasers of properties from original defendant Nos.1 to 4.

3. The original plaintiffs filed the suit for partition and separate possession of joint family properties specified in the plaint and also for a specific declaration that the documents executed by defendant Nos. 1 to 4 in favour of defendant Nos.5 to 20 were legal and valid only to the extent of share of defendant No.1 and that they were not binding on the shares of the original plaintiffs. As noted hereinabove, the suit was dismissed in its entirety, while the first Appellate Court allowed the appeal by partly decreeing the same in respect of the suit properties, except the properties at survey No. 119/2B and 18/7. During the course of arguments, in this appeal, the learned counsel for the appellants, on instructions, restricted the claim of the appellants (original plaintiffs) only to the property at survey No. 119/2B.

4. This Court, on 6th August 2014, framed two substantial

questions of law, while admitting the appeal. At the stage of final hearing, on 6th November 2025, by recourse to Section 100(5) of the Civil Procedure Code, 1908 (CPC), this Court framed a further substantial question of law, as a consequence of which, arguments in this appeal were heard on the following three substantial questions of law :

[1] Whether the appellate Court was right in excluding Survey Nos.119/2B and 18/7 from the partition and separate possession ?

[2] Whether the findings recorded by the appellate Court are based upon the relevant evidence available on record?

[3] Whether averment in respect of nature of property in the registered sale deed would operate as an estoppel against the parties to the transaction?

5. Before considering the rival submissions made on behalf of the appellants and contesting respondent No.10 on the aforementioned substantial questions of law, it would be appropriate to briefly refer to the chronology of events, leading to filing of the instant appeal.

6. Narayan Kate was an ancestor of the original plaintiffs (appellants) and defendant Nos.1 to 4 (respondent Nos.1 to 4). He had three sons Laxman, Vishnu and Mahadu. The said Narayan Kate expired, leaving behind the aforesaid three sons. In or about 1920, survey Nos. 119 and 124 were taken on permanent tenancy (known as Mirashi tenancy) from one Kashinath Vinayak Gupchup. As per the Mirashi tenancy, the aforesaid sons of

Narayan Kate used to give crop share to Kashinath Vinayak Gupchup. In 1924, Laxman died, leaving behind Vishnu and Mahadu. The two brothers continued the Mirashi tenancy. In 1927, Kashinath Vinayak Gupchup expired and the name of his daughter Yamunabai Balkrushna Rede was entered into the revenue record in respect of the said properties. In 1929, the said Yamunabai Balkrushna Rede died, leaving behind her daughter Laxmibai Deshpande, whose name was entered into the revenue record. It appears that the other properties jointly belonging to the brothers had been mortgaged with Laxmibai Deshpande and a loan was obtained, in the context of which in 1936, Laxmibai Deshpande filed Regular Civil Suit No. 553 of 1936 for recovery of land by foreclosure of mortgage. The suit was decreed and the two brothers i.e. Vishnu and Mahadu paid the decretal amount. The names of the two brothers continued in the revenue record as tenants of the said survey No.119.

7. In 1945, Vishnu died, leaving behind his widow Tanubai and four daughters i.e. the original plaintiffs and one son i.e. the original defendant No.1. It is to be noted that sometime during this period, part of land at survey No.119 and others were notified for acquisition for military hospital and somewhere down the line, survey No.119 was renumbered as 119/1 and 119/2. The appellants claim that survey No.119/1 was subject matter of acquisition, while survey No.119/2 continued as part of the Mirashi tenancy.

8. In this backdrop, on 15th October 1949, Tanubai i.e. widow of Vishnu and their son Dnyaneshwar i.e. original defendant No.1 filed Civil Suit No. 2496 of 1949 against Mahadu and his sons, for partition and separate possession. In 1950, the Collector passed award in pursuance of Land Acquisition proceedings concerning survey No.119. On 24th July 1951, a compromise decree was passed in aforesaid Civil Suit No. 2496 of 1949 filed by the said Tanubai and original defendant No.1 against Mahadu and his sons. While the other properties were partitioned as per the compromise between the parties, as regards survey No.119, the compensation was divided equally between the branches of Vishnu and Mahadu.

9. It is the case of the appellants that after Vishnu expired, the name of only Mahadu erroneously stood recorded in the revenue record pertaining to land at survey No.119/2, although, the Mirashi tenancy was continued for and on behalf of the family. It is further claimed that upon enactment of the Hindu Succession Act in 1956, as per Section 14(1) thereof, the said Tanubai, who had acquired life interest in the properties as per the Hindu Women Right to Property Act, 1937, became the absolute owner of the property. On 10th July 1960, Tanubai died and according to the appellants, her share devolved upon the original plaintiffs as her daughters and original defendant No.1 as her son. On 26th July 1974, the said Mahadu and original defendant No.1 Dnyaneshwar made a joint application before the Competent Authority for sub-

division of survey No.119/2. On the basis of the said application, on 2nd August 1974, the said survey No.119/2 was sub-divided in the revenue record as survey No.119/2A and survey No.119/2B, with survey No.119/2B being allotted to original defendant No.1 Dnyaneshwar. The appellants urged that they being the daughters were entitled to share in the said property, but only the name of original defendant No.1 Dnyaneshwar was recorded in the revenue record, further claiming that such entry in itself would not deprive them of their rightful claim.

10. On 9th June 1983, the original defendant No.1 Dnyaneshwar entered into a registered document styled as sale deed in respect of 3 acres 25 guntha at survey No.119/2B, whereby the property was sold/made over to original defendant No.10 (respondent No.10 herein). In the said document, it was categorically stated that subject property was ancestral property derived from Vishnu. It is the case of the appellants i.e. the original plaintiffs that they were completely unaware of the aforesaid transaction unilaterally executed by the original defendant No.1 Dnyaneshwar i.e. their brother. It is in this backdrop that the appellants filed Special Civil Suit No. 1900 of 1997 for partition, separate possession and declaration, as noted hereinabove. The plaint specifically included property at survey No.119/2B, concerning the document executed unilaterally by original defendant No.1 in favour of original defendant No.10 (respondent No.10 herein). Upon completion of pleadings and recording of evidence, the Court of Joint Civil

Judge Senior Division, Pune, rejected the contentions of the appellants and dismissed the suit by judgment and order dated 22nd March 2011. Aggrieved by the same, the appellants filed Civil Appeal No. 273 of 2012. By the impugned judgment and order, the Court of District Judge-5, Pune i.e. the first Appellate Court, only partly allowed the appeal, specifically holding that while the original plaintiffs had been able to prove their share along with the original defendant No.1 in other suit properties, as regards land at survey No.119/ 2B, it could not be made subject matter of partition and the prayer made on behalf of the appellants that the registered document dated 9th June 1983 executed in favour of respondent No.10 be declared to be binding only to the extent of share of original defendant No.1, was also rejected. Aggrieved by the same, the appellants filed present Second Appeal No. 450 of 2014, wherein this Court is required to consider the above mentioned three substantial questions of law.

11. Mr. Sanjeev Gorwardkar, learned senior counsel appearing for the appellants, submitted that the Appellate Court committed a grave error in holding in favour of respondent No.10, despite agreeing with the appellants on all other counts, while partly allowing the appeal and thereby, partly decreeing the suit. It was submitted that the land at survey No.119/2B pertained to Mirashi tenancy and that such a tenancy is a permanent tenancy, which can be inherited, dealt with, willed away and it can also be subject matter of transaction in favour of another person for

consideration. Reliance was placed on judgment of this Court in the case of *Shrimantibai Ramu Nargude & Anr. v/s. Bhimrao Appa Nargude & Ors.*, **2008(6) Mh.L.J. 807**, in support of the said proposition. By referring to the chronology of events and entries made in revenue records from time to time, it was submitted that although, the revenue record could not bestow title on any individual, but such entries were indicative of the fact that the Mirashi tenancy pertaining to survey No.119 was always part of and treated as joint family asset by the members of the joint family, whose original ancestor was the said Narayan Kate. It was submitted that, during the course of events, that occurred from the year 1920 onwards, although in some places, names of only one or two individual members of the joint family were entered in the revenue record, but all throughout the said land at survey No.119 and thereafter, 119/2B was treated as joint family property in the form of Mirashi tenancy, ultimately being held by the original defendant No.1 Dnyaneshwar for the branch pertaining to one of the three sons of Narayan Kate i.e. Vishnu. By referring to the plaint in Civil Suit No.2496 of 1949 and the compromise decree passed therein, it was submitted that the property came to Tanubai and through her ultimately to the appellants as her daughters and their successors, as also original defendant No.1 i.e. Dnyaneshwar being the son. In such a situation, it was submitted that the original defendant No.1 Dnyaneshwar could not have unilaterally dealt with the said Mirashi tenancy by executing the registered document dated 9th June 1983 in favour of the original defendant

No.10 (respondent No.10). At best, the said document would be legal and valid only to the extent of share of original defendant No.1 Dnyaneshwar and it would certainly not be binding on the daughters of Tanubai i.e. the original plaintiffs (appellants herein).

12. It was submitted that the first Appellate Court in the present place accepted the contentions raised on behalf of the appellants with regard to the joint nature of property that was the subject matter of the suit and yet, while dealing with the land at survey No.119/2B, an error was committed by holding that Tanubai had no interest left therein. The evidence and material on record was wrongly appreciated to hold that after compromise in Civil Suit No. 2496 of 1949, Tanubai lost her interest in land survey No. 119 and hence, the original defendant No.1 Dnyaneshwar was entitled to deal with the property at land survey No.119/2B, as per his own will.

13. It was further submitted that the first Appellate Court erroneously ignored the admissions given by the original defendant No.10 (respondent No.10 herein) in the evidence and also the specific statement made in the subject document dated 9th June 1983, executed in favour of defendant No.10 to the effect that the subject property was ancestral property derived from Vishnu.

14. It was further submitted that the respondent No.10 before this Court cannot claim that the plaint in Civil Suit No. 2496 of 1949 and the compromise decree passed therein, could not be

looked at because details thereof were never pleaded, for the simple reason that the said argument was rejected by the first Appellate Court and the same remained unchallenged, particularly in the light of cross objection not being pressed in the present case. It was further submitted that the respondent No.10 was also not justified in contending that the original Mirashi tenancy was in favour of the three brothers i.e. Laxman, Vishnu and Mahadu in their individual capacities, for the reason that on this aspect also the first Appellate Court had held against the respondent No.10, which has remained unchallenged. It was further submitted that the respondent No.10 cannot be permitted to argue that survey No.119 was acquired in its entirety and that partial acquisition was not pleaded on behalf of the appellants. It was submitted that this argument was self-destructive for the reason that if the entire survey No. 119 had been acquired, there would be no basis for the original defendant No.1 executing the registered document dated 9th June 1983 in favour of respondent No.10 with regard to survey No. 119/2B.

15. As regards the contention raised on behalf of respondent No.10 concerning admissions, particularly the statement amounting to admission in the said registered document dated 9th June 1983, it was submitted that the admissions in the evidence were clearly on record and the statement about the subject property being ancestral property was contained in the registered document dated 9th June 1983, upon which respondent No.1

himself relies and therefore, the attempt to wriggle out of the situation by relying upon an assertion made in the additional written statement cannot come to the aid of respondent No.10. It was submitted that the contention pertaining to estoppel would not inure to the benefit of respondent No.10 in the light of admission given in cross-examination by the respondent No.10 himself.

16. It was submitted that in such circumstances, while the first Appellate Court correctly held in favour of the appellants with regard to other properties, a grave error was committed in respect of property at survey No.119/2B. It was submitted that therefore, the substantial questions of law deserve to be answered in favour of the appellants and the appeal ought to be allowed.

17. Mr. Anturkar, learned senior counsel appearing for the contesting respondent No.10, submitted that the contentions raised on behalf of the appellants cannot be countenanced in the light of deficient pleadings and also in the absence of appropriate evidence to support the claims of the appellants. It was submitted that there was absolutely no pleading on record to justify framing of the third substantial question of law, which this Court framed by exercising power under Section 100(5) of the CPC. It was submitted that the aspect of the estoppel was inextricably linked the assertion of admission inuring to the benefit of the appellants. That estoppel was required to be pleaded and hence, there was no substratum for framing the third substantial question of law. As

regards the first two substantial questions of law, it was submitted that the first Appellate Court correctly appreciated the pleadings, evidence and material on record to render findings in favour of respondent No.10, as regards the registered document dated 9th June 1983.

18. It was submitted that neither the factum pertaining to filing of Civil Suit No. 2496 of 1949 nor the compromise decree was ever pleaded on behalf of the appellants. Therefore, reference to the same, during the course of arguments, on behalf of the appellants could be said to be without any basis and deserves to be ignored. It was submitted that the relevant documents on record show that the subject land pertaining to survey No.119 was never pleaded to be a joint family property and that there was nothing on record to show that only a part of the said survey No. 119 was acquired. This was being orally asserted for the first time before this Court. The record shows that the entire survey No.119 was acquired and the compensation received was distributed as per the compromise decree pertaining to the aforesaid suit of the year 1949. It was submitted that even if it was to be assumed for the sake of arguments that only part of survey No.119 was acquired, the tenancy must have existed only in the part that was acquired. Much emphasis was placed on the contents of the plaint pertaining to Civil Suit No. 2496 of 1949, highlighting the fact that while enumerating the ancestral property, certain lands, including land at survey No.119 were kept out.

19. It was submitted that the first Appellate Court correctly found that even if there were so called admissions on the part of respondent No.10 with regard to the property being ancestral property, when the evidence and material on record was appreciated in its totality, there was lack of material to substantially prove any such admission to operate as an estoppel. It was not even the case of the original plaintiffs that due to the so called admission in the subject agreement/registered document dated 9th June 1983, they had altered their position in any manner. On this basis, it was submitted that the alleged admissions were wholly irrelevant. It was further submitted that the only witness who entered the witness box on behalf of the appellants was born much after the relevant incidents had already taken place and therefore, he could never have deposed with regard to such facts. The appellants never entered the witness box and on that basis, it was submitted that this Court may consider drawing an adverse inference against them. In this regard, reliance was placed on the judgment of the Supreme Court in the case of *Janki Vashdeo Bhojwani & Anr. v/s. Indusind Bank Ltd. & Ors., (2005) 2 SCC 217*. It was further submitted that revenue records nowhere show that original defendant No.1 Dnyaneshwar or for that matter even Mahadu held the subject land at survey No.119 as a Karta of the joint family. It was submitted that therefore, the appeal deserved to be dismissed. An attempt was made to claim that the suit was barred by limitation, as the subject document was executed in the year 1983, while the suit was filed in the year 1987.

20. On this basis, it was submitted that three the substantial questions of law deserve to be answered against the appellants and the appeal deserves to be dismissed.

21. This Court has considered the rival submissions by perusing the record, including the pleadings and evidence, as also the judgments of the two Courts below. It was specifically submitted on behalf of respondent No.10, on instructions, that the cross-objection was not pressed and hence, it was withdrawn.

22. A perusal of the impugned judgment of the first Appellate Court shows that points were framed for consideration after referring to the chronology of events, pleadings, evidence and material on record, as also the judgment and order passed by the original Court i.e. the Joint Civil Judge Senior Division, Pune.

23. The first Appellate Court in the impugned judgment specifically found that the documents at exhibits 226 and 227 i.e. the plaint in Civil Suit No. 2496 of 1949 and the compromise decree were not only placed on record, but also relied upon by the original plaintiffs i.e. the appellants. It was recorded that the relationship between the parties was nowhere disputed, thereby showing that the original plaintiffs were indeed the sisters of defendant No.1 Dnyaneshwar and that they were the only children of Vishnu and Tanubai. On this basis, a categorical finding was rendered by the first Appellate Court that in view of the admitted relationship between the parties and certified copies of the aforesaid documents placed on record at exhibits 226 and

227, it was clear that the said documents could certainly be considered to reach a conclusion with regard to rival submissions pertaining to joint nature of properties. It was also held that only facts were required to be pleaded and not the evidence, thereby accepting the contention of the appellants that the documents at exhibits 226 and 227 could certainly be considered. The findings of the first Appellate Court have gone unchallenged insofar as respondent No.10 is concerned and therefore, it cannot now lie in the mouth of the said respondent that this Court ought not to look at the documents at exhibits 226 and 227 i.e. the plaint in Civil Suit No. 2496 of 1949 and the compromise decree passed thereon.

24. The first Appellate Court further went on to hold that Tanubai i.e. the widow of Vishnu acquired limited interest under the Hindu Women Right to Property Act, 1937, in the undivided joint family property interest of the deceased Vishnu. It was also found that after the death of Vishnu, Tanubai and the original defendant No.1 Dnyaneshwar acquired tenancy rights of survey No.119 along with Mahadu. A finding was also rendered that since original defendant No.1 was minor at the relevant time and Tanubai was widow, Mahadu was cultivating the land as a tenant on behalf of the joint family. Again the said finding has remained unchallenged on behalf of respondent No.10. This is because the cross objection was not pressed on behalf of the respondent No.10 and this Court has only considered the second appeal filed by the appellants i.e. the original plaintiffs. The contention sought to be

raised on behalf of respondent No.10 that the suit was barred by limitation is also rejected on the very same basis. This is because the first Appellate Court correctly held that the suit was filed within limitation.

25. But, the first Appellate Court, while considering the aspect of land being acquired by the Government from land at survey No.119 for military hospital, reached a conclusion that compensation amount for such acquisition was divided equally amongst the plaintiffs in Civil Suit No. 2496 of 1949 i.e. Tanubai and Dnyaneshwar on the one hand and defendants i.e. Mahadu and his sons on the other, further holding that the tenancy rights of the family came to an end and land survey No. 119 became property of the Government. This finding ignores the fact that despite the acquisition proceeding culminating into an award and the compensation being distributed as per the compromise between the aforesaid parties, the name of Mahadu continued on the revenue record with regard to a part of survey No.119 and that he continued to perform agricultural activities thereon. The land at survey No.119 was shown in the record as split into land at survey No.119/1 and survey No.119/2, with the name of Mahadu being entered in the revenue record in respect of survey No.119/2. Thereafter, a joint application was made by the said Mahadu with original defendant No.1 Dnyaneshwar for further sub-division of survey No.119/2, leading to the revenue record on 2nd August 1974 recording survey No.119/2B as allotted to the

original defendant No.1 Dnyaneshwar. In the face of this material and the specific claim of the appellants that Dnyaneshwar necessarily held tenancy in survey No.119/2B for or on their behalf also, the first Appellate Court could not have reached the conclusion that the entire survey No.119 was acquired, for which compensation was disbursed.

26. It is surprising that the respondent No.10 also took a stand before this Court that the entire survey No.119 was acquired by the Government. This completely cuts against the interest of respondent No.10 itself because if the entire land in survey No.119 was actually acquired, the whole basis of original defendant No.1 executing registered document dated 9th June 1983 in favour of respondent No.10 would be destroyed. In other words, accepting the aforesaid contention raised on behalf of the respondent No.10 would destroy the very basis of the said respondent claiming right in the land at survey No.119/2B. The alternative submission made on behalf of respondent No.10 that even it is assumed for the sake of arguments that only part of survey No.119 was acquired, the tenancy must have existed only in the part that was acquired, is an argument based on conjectures and it runs counter to the contemporaneous record available in this case.

27. The impugned judgment and order of the first Appellate Court, while considering the rival submissions with regard to land at survey No.119/2B, erred in proceeding on the basis that

Laxmibai Deshmukh i.e. the successor of the original owner Kashinath Vinayak Gupchup had never sold the land in survey No.119/2 to Mahadu and therefore, ultimately it could not be said that there was any basis for the land being mutated in the name of Mahadu. The first Appellate Court also erred in holding that Tanubai had no interest left in land survey No.119, after having taken part of the compensation as per the compromise decree passed in Civil Suit No. 2496 of 1949. As noted hereinabove, the revenue record did show that Mahadu's name as a tenant continued on land survey No.119/2 and ultimately it was split into land survey Nos.119/2A and 119/2B. This aspect was not appreciated in the correct perspective by the first Appellate Court to hold against the appellants.

28. The first Appellate Court also erred in holding against the appellants with regard to admissions given by the contesting respondent No.10 in the pleadings as well as the evidence. The assertion recorded in the registered document dated 9th June 1983 executed by the original defendant No.1 in favour of defendant No.10 (respondent No.10 herein) was also not taken into account in the correct perspective.

29. The evidence on record shows that original defendant No.10 (respondent No.10) in cross-examination admitted to the contents of the aforesaid registered document dated 9th June 1983 executed by the original defendant No.1, wherein it was specifically recorded that the subject property was ancestral property. The

statement in the said document has to be read in the face of such an admission and this factor cannot be ignored while deciding the claim of respondent No.10 that the property at survey No.119/ 2B ought not to be considered as ancestral property, in which the appellants could stake their claim. It is in this sense that the admission given on behalf of the respondent No. 10 was required to be appreciated. The first Appellate Court erred in proceeding on the basis that mere admission of the adverse party would not confer any right upon the appellants. This finding was given on the aforementioned erroneous finding that Tanubai had no interest left in land at survey No.119. The evidence on record demonstrating the manner in which the land at survey No.119 was initially bifurcated into survey Nos.119/1 and 119/2 and thereafter, into survey Nos.119/2A and 119/2B, traces the manner in which the said property was recorded in the name of the original defendant No.1 Dnyaneshwar. This aspect had to be considered, coupled with the said admissions and in that context, the statement in the registered document dated 9th June 1983 was required to be appreciated. The first Appellate Court failed to do so in the correct perspective.

30. The law regarding admission amounting to an estoppel and such estoppel requiring pleading would not come in the way of the appellants in the facts and circumstances of the present case, where the statement in the registered document dated 9th June 1983, to which respondent No.10 was a party, bolsters the case of

the appellants with regard to their claim of the same being joint family property or ancestral property. In this context, the admission given in the evidence on behalf of the respondent No.10 could not be ignored and mere withdrawal of admission in the additional written statement would also not inure to the benefit of respondent No.10. Once this conclusion is reached, it becomes evident that the first Appellate Court in the present case, having rendered findings with regard to joint nature of the property in land survey No.119, which was a Mirashi tenancy, could not have proceeded to hold against the appellants on the erroneous basis that Tanubai had lost her interest in the said property or that the land having been acquired by the Government, the declaration claimed in respect of the land at survey No.119/2B could not be granted to the appellants. As noted hereinabove, the contention raised on behalf of the respondent No.10 that the entire survey No.119 was acquired by the Government would render null and void the registered document dated 9th June 1983, upon which the respondent No.10 claims right in the aforesaid suit property. This further demonstrates the fallacy in the contentions raised on behalf of respondent No.10.

31. This Court finds substance in reliance placed on behalf of the appellants on the judgment of this Court in the case of *Shrimantibai Ramu Nargude & Anr. v/s. Bhimrao Appa Nargude & Ors. (supra)*, wherein it has been specifically held that Mirashi tenancy is a permanent tenancy, which is inheritable and can also

be transferred. The transfer of such a right in the present case ought to have been held by the first Appellate Court as legal and valid only to the extent of share of original defendant No.1 Dnyaneshwar and not binding on the appellants.

32. The law laid down by the Supreme Court in the case of *Janki Vashdeo Bhojwani & Anr. v/s. Indusind Bank Ltd. & Ors.* (**supra**) cannot come to the aid of respondent No.10, for the reason that the first Appellate Court itself held that even if the witness, who actually deposed on behalf of the appellants, could not be having personal knowledge about the events that occurred prior to his birth, the documents at exhibits 226 and 227 i.e. the plaint in the Civil Suit No. 2694 of 1949 and the compromise decree were undeniable documents and the contentions raised in that context were clearly found to be acceptable by the first Appellate Court itself. In the face of such findings rendered in favour of the appellants, the first Appellate Court could not have gone ahead to hold against the appellants in respect of suit property at survey No.119/2B.

33. It is also relevant to note that in the first written statement, the original defendant No.10 (respondent No.10) had expressly pleaded oral partition of survey No.119/2B and such a contention necessarily presupposes that it was joint family property. This is another aspect which has to be read in conjunction with the statement made in the registered document dated 9th June 1983 that the subject property i.e. survey No.119/2B was ancestral

property. Therefore, when the evidence and material on record is appreciated from any angle, it is found that the first Appellate Court erred in rendering findings against the appellants in respect of the said suit property, despite rendering findings in their favour with regard to the joint nature of the property in the earlier part of the judgment. The flow of the logic of the impugned judgment of the first Appellate Court in paragraphs 38 onwards ought to have continued, but the error crept in from paragraphs 42 onwards, leading to perverse findings rendered by the first Appellate Court, while only partly allowing the suit of the appellants (original plaintiffs).

34. In view of the above, this Court is of the opinion that the three substantial questions of law framed in this appeal deserve to be answered in favour of the appellants and against the respondent No.10. Accordingly, the questions are answered in favour of the appellants and the appeal deserves to be allowed.

35. As noted hereinabove, the appellants themselves restricted arguments in this appeal to property at survey No.119/2B, although the first substantial question of law referred to property at survey No.18/7 also. Therefore, the benefit of this judgment for the appellants is restricted to suit property at land survey No.119/2B.

36. In view of the above, the appeal is allowed and the impugned judgment and order of the first Appellate Court is modified by further holding that the registered document dated 9th

June 1983, styled as sale deed, executed by original defendant No.1 Dnyaneshwar in favour of original defendant No.10 (respondent No.10 herein) is legal and valid only to the extent of share of original defendant No.1 Dnyaneshwar and that it is not binding on the shares of the original plaintiffs i.e. the appellants herein and their successors. The rest of the findings rendered by the first Appellate Court and the decree passed in respect of the other properties is upheld. The decree shall stand modified accordingly. The modified decree shall be drawn up in the light of the observations made hereinabove.

37. Pending applications, if any, stand disposed of.

38. In the facts and circumstances of the present case, there shall be no order as to costs.

(MANISH PITALE, J.)