



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 315 OF 2012
WITH
CIVIL APPLICATION NO. 6223 OF 2012**

1. Anna Asaram Adhane,
Age; 52 years Occ; Agri,
R/o; Gadana, Tq. Khultabad,
District; Aurangabad.
2. Laxmibai w/o Anna Adhane,
Age; 48 years, Occ; Agri,
R/o; Gadana, Tq. Khultabad,
District ; Aurangabad.
3. Rustum s/o Anna Adhane,
Age; 45 yerars, Occ; Agri,
R/o; Gadana, Tq. Khultabad,
District ; Aurangabad.
4. Radha w/o Rustum Adhane,
Age; 40 years, Occ; Agri,
R/o; Gadana, Tq. Khultabad,
District ; Aurangabad.
5. Raghunath s/o Anna Adhane,
Age; 41 years, Occ; Agril,
R/o; Gadana, Tq. Khultabad,
District ; Aurangabad.
6. Renuka w/o Raghunath Adhane,
Age; 42 years, Occ; Agril,
R/o; Gadana, Taluka Khultabad,
District; Aurangabad.

7. Pandharinath s/o Anna Adhane,
Age; 39 years, Occ; Agril,
R/o; Gadana, Taluka Khultabad,
District; Aurangabad.
8. Rangnath s/o Anna Adhane,
Age; 35 years, Occ; Agril,
R/o; Gadana, Taluka Khultabad,
District; Aurangabad.
- 9 Sarjerao s/o Asaram Adhane
Age; 60 years, Occ; Agril,
R/o; Gadana, Taluka Khultabad,
District; Aurangabad. **DIED.**
Through Legal Representatives :-
- 9-A Kacharabai @ Yamunabai w/o Digambar
Laggad,
Age; 47 years, Occ; Agriculture,
R/o; Bhavsingpura, Taluka and District
Aurangabad.
- 9-B Panchfula w/o Ramkrishna Nage,
Age; 35 years, Occ; Agri,
R/o; Bhagyauttam Niwas,
6/7, N-6, Mathuranagar,
Aurangabad.
10. Bhagubai w/o Sarjerao Adhane,
Age; 55 years, Occ; Agri,
R/o; Gadana, Taluka Khultabad,
District; Aurangabad.
11. Ashok s/o Sarjerao Adhane,
Age; 30 years, Occ; Agril,
R/o; Gadana, Taluka Khultabad
District; Aurangabad.

12. Usha w/o Ashok Adhane,
Age; 25 years, Occ; Agri,
R/o; Gadana, Taluka Khultabad,
District; Aurangabad.
13. Mittu s/o Sarjerao Adhane,
Age; 25 years, Occ; Agri,
R/o; Gadana, Taluka Khultabad,
District; Aurangabad.
14. Krishna s/o Sarjerao Adhane,
Age; 21 years, Occ; Agri,
R/o; Gadana, Taluka Khultabad
District; Aurangabad.
15. Lata w/o Mittu Adhane,
Age; 20 years, Occ; Agril,
R/o; Gadana, Taluka Khultabad,
District; Aurangabad.

...APPELLANTS
(Orig. Defendants)

VERSUS

1. Namdeo s/o Ambadas Ubale,
Age; 51 years, Occ; Agri,
R/o; Khandipimpalgaon,
Tq. Khultabad, District; Aurangabad.
2. Jijabai w/o Jagannath Ubale,
Age; 48 years, Occ; Agril,
R/o; Khandipimpalgaon
Tq. Khultabad, District; Aurangabad.
3. Vitthal s/o Ambadas Ubale,
Age; 45 years, Occ; Agril,
R/o; Khandipimpalgaon
Tq. Khultabad, District; Aurangabad.

4. Suryabhan s/o Ambadas Ubale,
Age; 45 years, Occ; Agril,
R/o; Khandipimpalgaon
Tq. Khultabad, District; Aurangabad.

...RESPONDENTS
(Orig. Plaintiffs)

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Advocate for the Appellants : Mr. D.R. Markad h/f Mr.N.K. Kakade
Advocate for the Respondent No. 1 : Smt. Pooja V. Langhe h/f
Mr. N.D. Zinjurde Patil
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CORAM : SANDIPKUMAR C. MORE, J.

Date of Reservation : 22.02.2024

Date of Pronouncement : 23.02.2024

JUDGMENT :

1. Heard finally at the admission stage.
2. The appellants who are the original defendants in RCS No. 10 of 2003 have filed this Second Appeal, challenging the order of the learned first appellate Court, whereby, the dismissal of their counter claim in the aforesaid suit was upheld.
3. The record shows that the present appellants are the original defendants in RCS No.10 of 2003, which was filed by the

present respondents/original plaintiffs for getting the decree of perpetual injunction against the present appellants in respect of suit land Gut No. 47, to the extent of 3 Hectors and 54 Are. In the present suit, the appellants had filed their written statement and also lodged counter claim against the present respondents/plaintiffs and thereby claimed perpetual injunction against the respondents to the extent of 1 Hector 18 Are. The learned trial Court vide the judgment and decree dated 09.05.2005 decreed the suit of the present respondents/original plaintiffs and rejected the counter claim of the present appellants. Feeling aggrieved with the rejection of the counter claim the present appellants have filed Regular Civil Appeal bearing No. 284 of 2005, before the learned first appellate Court, but the same was dismissed by the judgment and decree dated 15.10.2011. As such, the appellants have filed this appeal.

4. The learned Advocate for the appellants submits that a substantial question of law is involved in this matter is that, both the Courts below have rejected the claim of injunction sought by the present appellants against the respondents/original Plaintiffs, despite accepting sale deeds of the appellants in respect of the suit

land to the extent of 1 Hector and 18 Are.

5. On the contrary, the learned Advocate for the respondents/original plaintiffs has strongly opposed the submission made on behalf of the appellants by pointing out that the appellants themselves had filed one Regular Civil Suit No. 71 of 1989, prior to the filing of the present suit for the same relief of perpetual injunction as claimed by them in the present counter claim, which was dismissed on merits and the appeal thereon preferred by the present appellants was also dismissed. Not even this, but the Second Appeal filed against the dismissal of the said suit as well as appeal by the present appellants, also got dismissed at the hands of this Court. She produced on record the order of this Court in the aforesaid Second Appeal. Thus, she prays that the counter claim of the present appellants is definitely hit by the principles of res-judicata. Moreover, she pointed out that though the sale deeds are there on record, by which the appellants allegedly purchased certain area of the suit land from the erstwhile owner Pandharinath, but the same is not in existence at all, as it might have gone into the 'Nala, Road or River Area'.

6. The record shows that the trial Court while rejecting

Counter Claim of the appellants, in the present suit has given negative findings on the aspect of Counter Claim being hit by the principles of res-judicata. But the learned first appellate Court has given affirmative findings on the said aspect. Admittedly, the claim of the present appellants which is similar to their claim in the Counter Claim has been rejected in their earlier suit bearing RCS No. 71 of 1989 up to this Court. I would like to reproduce the part of the order passed by this Court on 01.04.2009, in Second Appeal No. 844 of 2005, preferred by the present appellants, in respect of dismissal of their earlier suit, which reads as under :

“4) The learned Counsel for the appellants has apparently missed the entire judgment of the first appellate Court, in which though the points indicate about the judgment of the Court of first instance, in the body of the judgment, the first appellate Court has discussed the evidence and documents, and appreciated as to its maintainability and the difficulties that the plaintiffs have faced. In paragraph 18, the first Appellate Court, has accepted that based on the sale-deed and based on the finding recorded in R.C.S. No. 71 of 1989 it is not in dispute about the ownership of the appellants/plaintiffs over the suit land. However, the first Appellate Court also did not find any document to come to the conclusion that after deleting entry in 1988-89, the appellants/plaintiffs have cultivated the land at any time. It was observed by the first appellate Court and rightly that the land purchased by the plaintiffs/appellants was not irrigated land (Pot Kharab), and it was not

measured at the time of purchase by the appellants/plaintiffs. The vendor of the appellants, Pandharinath Ubale was having only symbolic possession over the suit land, as provenly he was not in actual cultivation. It was, in this backdrop, he was not sure about the exact location and boundaries of the suit land which has reflected in the sale-deed dated 07.01.1988. The subsequent correction deed about the boundaries will not change colour and complexion in the matter. There is finding in favour of the plaintiffs about declaring their status, however, there is cloud about the possession over the suit property. Consequently, the Second Appeal lacks merit, it is dismissed with civil application. The plaintiffs/appellants are at liberty to adopt appropriate proceedings, if advised."

7. Thus, it appears that the present appellants in the first round of litigation could not give any satisfactory evidence about the location of their property. Even the subsequent correction deed was not sufficient to point out the exact location of the property of the appellants. Moreover, the appellants in the present proceedings themselves have admitted the sale deeds of respondents/plaintiffs, by which they purchased the suit land. Therefore, when the same relief as claimed by the appellants in the instant counter claim has been rejected up to this Court, the appellants cannot claim same relief again by filing counter claim in the instant proceeding, specially when they did not challenge the findings of this Court in

their Second Appeal No. 844 of 2005. As such, no substantial question of law appears to be involved in the instant Second Appeal and therefore, it stands dismissed along with pending Civil Application No. 6223 of 2012.

(SANDIPKUMAR C. MORE)
JUDGE

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