



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

SECOND APPEAL NO.524 OF 1994

Shaikh Gabru S/o. Shaikh Ahned,
Age-50 years, Occu-Agri,
R/o. Ahirwahegaon, Tq. Georai,
Dist. Beed

...APPELLANT
[Ori. Plaintiff]

VERSUS

Shaikh Sujat S/o. Shaikh Ahmed,
Age-60 years, Occu-Agril,
R/o. Ahir Wahegaon, Tq. Georai,
Dist. Beed

...RESPONDENT
[Ori. Defendant]

Mr. N. P. Bangar, Advocate for the appellant

CORAM : ABHAY J. MANTRI, J.

DATE : 04th DECEMBER, 2025

ORAL JUDGMENT :

1. Heard the learned advocate for the appellant. None appeared for the respondent when called out and perused the impugned judgments and order as well as the record.

2. The appellant-original plaintiff being aggrieved by the judgment and order dated 19-07-1994 passed by the learned Additional District Judge, Beed in RCA No.138/1985 whereby dismissed the appeal and confirmed the order dated 28-03-1985 passed by the learned Civil Judge Junior Division, Georai in RCS No.300 of 1981 whereby dismissed the suit filed by the appellant for

possession of the suit land.

3. It appears that vide order dated 03-02-1997, the second appeal has been admitted vide ground Nos. II and III, which read as under:

“II. Both the courts below have misconstrued and misappreciated the maps prepared by the Consolidation Officer by measurement of Survey No. 118 in the year 1959-60, wherein the names of the plaintiff and defendant are shown as joint possessors and owners of the land.

III. The courts below have totally misconstrued the entries in the revenue record wherein the name of the plaintiff appears.”

4. The learned advocate for the appellant has drawn my attention to the 7/12 extract of land Gut No. 544 of which (Old Survey No.118) (Exh. 5) and map (Exh. 21), and submitted that the 7/12 extract categorically indicates that the appellant is in possession of the suit land along with the respondent. His name is recorded in the 7/12 extract as both an owner and a possessor; therefore, he argued that the 7/12 extract and map have presumptive value. However, the learned both the courts below have not considered it in its proper perspective and erred in discarding the said 7/12 extract. The 7/12 extract and map indicate the appellant was the owner and joint possessor of the suit land. However, the learned trial court, as well as the learned appellate court, has not considered the same and erred in discarding it. He further submitted that the 7/12 extract has

presumptive value, and the map in question also has presumptive value under Section 25 of the Evidence Act. Therefore, he submitted that the findings recorded by the learned trial court are contrary to the evidence on record and were without consideration of the provisions of law; consequently, they cannot be sustained in law. Thirdly, he has drawn my attention to the observations made in para 13 of the judgment of the learned appellate court and submitted that the appellate court has considered the evidence of the vendor, PW-2 Niyazbi and also recorded her testimony therein, which indicates that the father of the respondent and appellant purchased the said land. However, the appellant was a minor at the time of the document's registration. Therefore, the same was purchased in the name of the respondent only, and thus, he submitted that the evidence of the vendor PW-2 shows that the appellant as well as the respondent are the joint owners. The learned both the courts below have not considered the evidence of PW-2 in its proper perspective and erred in discarding the same. Therefore, he submitted that the judgments and orders of both the learned courts below are illegal and perverse, and hence he urged that the appeal be allowed.

5. Having heard the learned advocate for the appellant, and perusal of the impugned judgments and record, the following point arises for consideration:-

- (i) *Whether any interference is required in the impugned judgments and decrees?*

6. On perusal of the record more particularly, the sale deed dated 25-04-1959, it appears that the respondent purchased the land from Niyazbi. It is also stated in the sale deed that she has received Rs. 800/- from the purchaser and, accordingly, has handed over possession of the suit land to him. In the sale deed, nowhere is it stated that the suit land was purchased jointly by the respondent and the appellant. However, only the respondent's name appears as the purchaser of the land, and possession was also handed to him. Similarly, it is not mentioned in the sale deed that the father of the appellant paid the amount to the respondent to purchase the land in the name of the respondent as well as the appellant. No averments appeared in the sale deed about the same, and therefore, the testimony of PW-2 Niyazbi seems contrary to the sale deed and thus, cannot be relied upon.

7. Moreover, the said sale deed was executed in 1959; at that time, the appellant was a minor, as deposed by PW-2 Niyazbi. Therefore, it does not appear that the father of the appellant and the respondent jointly purchased the said land in the name of the appellant and the respondent jointly. Thus, it seems that the appellant failed to demonstrate how he acquired ownership of the

suit land. The mere recording of the entry in the 7/12 extract does not mean that the appellant has acquired ownership rights. No doubt, the entries in the 7/12 extract got presumptive value. However, the presumption is rebuttable; the documents on record demonstrate that the land was purchased in the name of the respondent and that possession was handed over to him; the sale deed thereby rebuts the presumption. On the contrary, the appellant has failed to point to any document showing how his name was mutated in the 7/12 extract, based on which his name was recorded there as an owner and possessor. Therefore, I do not find any substance in the contention of the learned advocate for the appellant in that regard.

8. Secondly, I have perused the map (Exh. 21). It does not appear from the map that the appellant is in possession of the said suit land. The map depicts only survey No. 118/2. Therefore, said map does not help him in support of his contention, and thus, I do not find any substance in his contention in that regard.

9. Third submission in respect of the testimony of PW-2 Niyazbi. I have already observed that the testimony of Niyazbi appears contrary to the sale deed (Exh. 40) on record, and therefore, cannot be believed; thus, said testimony is of hardly any assistance to the appellant in support of his case.

10. Perused the plaint. In para 2 of the plaint, the plaintiff/appellant has categorically stated that he is the owner of the suit land. However, he has not stated how he acquired ownership of the suit land. He must explain in the plaint on what basis he acquired the ownership right. But that pleading is absent, and in the absence of the pleading, it cannot be said that he has ownership rights over the suit land.

11. Apart from that, he has not produced any documents on record to show that he has the ownership right. The production of the 7/12 extract only indicates that his name is recorded in the 7/12 extract as an owner and possessor of the suit land, which does not mean that, on the basis of said entry, he has the ownership right over the suit land. Alternatively, he has pleaded that they initially jointly cultivated the suit land. Thereafter, a partition took place between them, and in that partition, he received a half share of the Northern side of the suit land. But he nowhere stated the date on which the said partition took place, nor produced any documents to show that it did. Similarly, he has not stated the date on which he took possession. It is pertinent to note that in para 2, he stated that he is the owner of the suit land. However, in para 3, he has averred that he, along with the respondent, was jointly in possession of the land, and that thereafter a partition took place. But, no document was produced on

record to show that the partition took place, and in the partition, the appellant received the half portion of the suit land from the Northern side, and as such, he failed to prove that he had the ownership right over the suit land, or that he acquired the suit land. Nothing has been produced by the appellant on record to show that he has the ownership right, except a 7/12 extract, the entry of which was already rebutted. Thus, it appears that the appellant failed to show that he has ownership rights in the suit land or that he acquired the suit land by partition. Hence, I do not find substance in his contention in that regard.

12. Perused the judgment of the trial court as well as the learned appellate court. In para 15 to 17, the appellate court dealt with and discussed the same and held that the plaintiff/appellant failed to prove that he jointly purchased the land or half share of the suit land from the Northern side, which he received in partition and therefore, negated the issue and accordingly dismissed the suit. I do not find illegality or perversity in the findings recorded by the learned courts below. On the contrary, the findings recorded by the learned courts below are just, legal, and proper; therefore, no interference is warranted. *Hence, I answer point No. (i) in the negative.* Consequently, the second appeal, being bereft of merit, stands dismissed and disposed of.

[ABHAY J. MANTRI, J.]