

kps

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

**SECOND APPEAL NO.567 OF 1991**

Appasaheb Bapurao Tangde,  
age 45 years, occupation agriculture,  
R/o Jamb Samarth, Taluka Ambad,  
District Jalna.

..Appellant  
(Orig.Defendant)

**-Versus-**

Pralhad Shrikishan Tangde,  
age major, occupation agriculture,  
R/o Jamb Samarth, Taluka Ambad,  
District Jalna.

..Respondent  
(Orig.Plaintiff)

.....  
Mr.PP.Kothari h/f Mr.S.S.Bora, Advocates for the Appellant.  
None for the Respondent.

.....

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 23<sup>rd</sup> March, 2015**

Oral Judgment:

1           This Second Appeal was admitted on 18.12.1991. No substantial question of law was formulated. This Court, therefore, by it's order dated 11.11.2014 observed that this Court may have to consider afresh, whether, the Appeal raises any substantial question of law.

2           I have heard the learned Advocate for the Appellant at length.

None for the Respondent.

3 I find that RCS No.205/1981 was filed by the Plaintiff- Pralhad Shrikishan Tangde against the Appellant herein- Appasaheb Bapurao Tangde for seeking perpetual injunction and declaration of title and ownership.

4 The case put forth by the Plaintiff is that he was the owner and possessor of the land admeasuring 09 Acres and 05 Guntas out of Gat No.181 which was admeasuring 14 Acres and 46 Guntas. The Plaintiff claimed to have purchased the said suit land from the original owner Trimbak Sundarrao through a registered sale deed dated 30.07.1979. Since the Gat number was wrongly mentioned as 191, it was subsequently corrected by issuing a corrigendum on 27.07.1981 whereby the land was properly mentioned as Gat No.181.

5 The Appellant- Appasaheb had filed his Written Statement. He denied execution of the sale deed dated 30.07.1979 and corrigendum dated 27.07.1981. However, it is conceded that the Appellant/ Appasaheb has not preferred a counter claim so as to establish his right, title and interest over the suit land which he claims through his Written Statement on the basis of the sale deed which is at Exhibit-50 dated 30.07.1981.

6           The Trial Court, while delivering the judgment dated 04.03.1986 had cast the burden on the Plaintiff - Pralhad to prove his title over the suit land. So also the burden of proving possession was also cast on him and he was also to prove the alleged obstruction against the Appellant herein.

7           Based on the oral and documentary evidence before it, the Trial Court answered the issues in favour of the Plaintiff and concluded that he was the title holder of the suit property. The aspect as regards “Kararnama” alleged to have been executed by the Appellant in 1979 did not find reference in the sale deed Exhibit-50. The Trial Court, therefore, concluded that the Kararnama was not in existence when the alleged sale deed Exhibit-50 was said to have been signed on 30.07.1981. The Trial Court also recorded that the said sale deed Exhibit-50 was not a registered sale deed.

8           I have also considered the impugned judgment dated 27.11.1991 delivered by the first Appeal Court in RCA No.63/1986. There are certain observations made by the first Appeal Court which are based upon the oral and documentary evidence before it. In paragraph 13 of the appeal judgment, the Court has considered the clerical mistake that

occurred in mentioning Gat number as 191 instead of 181. Gat No.191 was apparently a Government land admeasuring only 16 Guntas and was not saleable.

9           In paragraphs 14 to 23, the first Appeal Court dealt with the evidence recorded before the Trial Court. The contention of the Appellant was that Trimbak had three mothers, namely, Mandodari, Anjanabai and Vithabai and one sister Rukminibai. If Trimbak had sold the land to the Appellant, overlooking the rights of his three mothers and one sister, it would have been a dispute between Trimbak and the rest of them. No such dispute was ever raised.

10           The stamp paper purchased and used in the alleged transaction between Trimbak and the Appellant was also dealt with by the first Appeal Court and which has recorded the finding that the stamp paper was not purchased from the nearest place taluka Ambad, but from a distant place in Jalna city. The stamp paper does not disclose the name of the stamp vendor who sold it and to whom it has been sold.

11           The first Appeal Court has also considered the evidence and concluded that the sale deed Exhibit-50 clearly appeared to have been executed first and Kararnama between Trimbak and his mothers and sister

was purportedly executed later on.

12           No evidence was placed on record to indicate as to how the Appellant has accounted for payment of Rs.24,500/- allegedly made on 16.03.1979. There is no reference to the same even in the agreement dated 16.03.1979. The Written Statement of the Appellant, which was filed on 12.12.1982, also makes no mention of the agreement said to have been executed on 16.03.1979.

13           The first Appeal Court also considered the fact that Trimbak had executed the registered sale deed in favour of the Appellant on 30.07.1979 and therefore, while purportedly executing Exhibit-50, he had no saleable interest in the suit land.

14           Having considered the above factors, I do not find that this Appeal raises any substantial question of law. The Grounds at Sr.Nos.3, 4, 5 and 6 framed by the Appellant, in my view, do not constitute a substantial question of law.

15           In the light of the above, the Second Appeal is dismissed.

**(RAVINDRA V. GHUGE, J.)**