

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

SECOND APPEAL NO.: 727 OF 2012

Machhindra S/o Nanabhau Narode,
Age: 48 years, Occu.: Agri.,
R/o Village Kurund, Tal. Parner,
District Ahmednagar.

... **APPELLANT**
[ORIG. DEFT.NO.2]

VERSUS

1. Kaka S/o Lobha Narode,
(Dead) Through Legal Representatives:
- 1A. Ranubai W/o Yashwant Bhavar,
Age: 33 years, Occu. Agri.,
R/o Pacharne Mala, Near Dome Vasti,
Tal. Shirur, District Pune.
- 1B. Suman Kaka Narode,
Age: 23 years, Occ. Agri.,
2. Chandrabhagabai W/o Kaka Narode,
Age: 68 years, Occu.: Agri.,
3. Rangubai W/o Raosaheb Tadekar,
Age: 41 years, Occu.: Agri.,
4. Raosaheb S/o Baburao Tadekar,
Age: 48 years, Occu.: Agri.
5. Dnyandeo S/o Bhau Pawase,
(Dead) Through Legal Representatives,
- 5A. Gangubai W/o Dnyanadeo Pawase,
Age: 43 years, Occu.: Agri.,
- 5B. Shivaji S/o Dnyandeo Pawase,
Age: 23 years, Occu.: Agri.
- 5C. Supriya D/o Dnyandeo Pawase,
Age: 21 years, Occu.: Agri.,

5D. Vilas S/o Dnyandeo Pawase,
Age: 18 years, Occu.: Education,

All R/o. Narwadewadi (Kurund),
Tal. Parner, District Ahmednagar.

6. Bajrang S/o Pandurang Pawase,
Age: 45 years, Occu.: Agri.,

7. Haribhau S/o baburao Tadekar,
Age: 53 years, Occu.: Agri.

... **RESPONDENTS**
[ORIG.PLTFFS.& DEFT.NO.
1 AND 3 TO 5].

Mr. P. R. Katneshwarkar, Advocate for the Appellant.

Mr. N. C. Garud, Advocate for Respondent Nos.2A, 1B & 2 & 3.

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CORAM:-

T. V. NALAWADE, J.

DATED:-

7th SEPTEMBER, 2015.

JUDGMENT:

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.195 of 1990 which was pending in the Court of learned Civil Judge, Junior Division, Parner, District Ahmednagar and also the judgment and order of Regular Civil Appeal No.140 of 2008 which was pending in the Court of District Judge-5, Ahmednagar. The suit filed against the present Appellant and others for relief of declaration and possession is decided against the present appellant and others. Both the sides are heard.

2. The learned counsel for the Appellant, original Defendant No.2, submitted that substantial question of law needs to be formulated on the basis of the ground, mentioned in the appeal memo. He submitted that when by giving application to revenue authority the owner Kaka Narode had given the property to his daughter and the said daughter had given property in similar way to her husband, in view of the relationship, the Courts below ought to have held that the Defendant No.1 Raosaheb was the owner of the property on the date when he sold the property to present Appellant. Thus, he wants formulation of substantial question of law on the aforesaid defence and he wants a finding that by such mode title can be transferred.

3. The suit was filed by Kaka Narode, his daughter and his wife against Defendant No.1 Raosaheb. Defendant No.1 is the husband of Defendant No.3. It appears that during pendency of the suit Defendant No.1 transferred the suit property under registered sale deed to defendant Nos.2 to 4 in the year 1991 and 2001 and so these

defendants were made parties to the suit as defendants.

4. Kaka was the owner of land Gat Nos.157 and 174. He had three daughters like Rangubai, Ranubai and Suman. Kaka made application to the Revenue Authority. Kaka and his wife had no male issue and so he got mutated the suit property in the name of his daughter like Rangubai in the year 1987. There is allegation that Defendant No.1 Raosaheb then some how, by deceiving Rangubai, got mutated his name in the revenue record of these lands. As Defendant No.1 was trying to dispose of the properties by using this mutation, suit was filed for aforesaid reliefs.

5. During pendency of the suit, Defendant No.1 sold 31 Ares portion of land from Gat No.174 under sale deed dated 22nd March, 1991 in favour of Defendant Machhindra, present Appellant. He then sold some portions of the same land in favour of defendant Nos.3 and 4. No permission of Court was obtained which could have been obtained under section 52 of the Transfer of Properties Act.

6. Defendant No.1 contested the suit by filing written statement and he contended that only to avoid the expenses of sale deed the mutations were made in favour of Plaintiff No.3, and so he became the owner of the suit properties. Defendant No.2 filed written statement and contended that as defendant No.1 was shown as the owner he purchased portion of the suit property from defendant No.1 and he is a bonafide purchaser.

7. The trial Court held that plaintiff No.1 was still the owner of the property and the mutation in favour of the daughter had not created any right or interest in favour of the daughter as no transfer had taken place. Similar observations are made in respect of mutation made in favour of Defendant No.1 on the basis of application made by Respondent No.3. The trial Court held that the present Appellant, defendant No.2 was not bonafide purchaser. It is not disputed that the suit property was owned by Plaintiff No.1 Kaka. If he wanted to give property to his daughter like Plaintiff No.3 it was necessary for him to execute the document like gift deed or sale deed. There was no such document created and registered as per the

provision of Section 17 of Indian Registration Act and the provision of section 54 and 123 of Transfer of Properties Act. By mutation he could not have transferred the title in the property to plaintiff No.3. Thus, the plaintiff No.3 had not become owner. Similarly, Plaintiff No.3, the wife of defendant No.1, could not have transferred anything to Defendant No.1 by applying to Revenue Authority for effecting mutation in favour of Defendant No.1 when no document of transfer was executed by her. In view of these circumstances it was not possible for defendant No.1 to sell the property to anybody like present Appellant. The transfer took place during pendency of the suit which was filed against Defendant No.1. In view of these circumstances and the manner in which the name of Defendant No.1 was entered, it was necessary for Defendant No.2 to make necessary inquiry about the rights or title of defendant No.1. He could not have presumed that the Defendant No.1 had become owner due to aforesaid mutation. Thus, it cannot be said that the present Appellant was bonafide purchaser. These points are answered against Defendant No.1 and present Appellant. There are no substantial questions of law as

such involved in the matter.

8. In the result, the appeal stands dismissed.

9. In view of final disposal of the second appeal itself, civil application No.12573 of 2012 for stay does not survive and the same stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dated:07/09/2015.
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