

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)**

SECOND APPEAL NO. 260 OF 1993

1. Bhima Dagadu Gaikwad
Residing at Karanjgaoa, Tal. Bhor,
District Pune,
2. Bajabai Chhagan,
3. Vimal Dagadu,
4. Chandrabai Dagadu Gaikwad,
5. Dadu Dagadu Gaikwad,
6. Ghagu Ragu Gaikwad,
7. Shankar Sonu Gaikwad,
8. Nana Pandurang Gaiwad,

All residing of Karanjgaon,
Tal. Bhor, Distt. Pune,
9. Sudam Raoji Gaikwad,
Residing of Karanjgaon,
Tal. Bhor, Distt. Pune, ..

**APPELLANTS/
Org. Plaintiffs**

.. **Versus** ..

1. Sakharam Ganu Gaikwad,
(Dismissed as per Addl.Registrar's
Order dt. 4.3.99)
2. Hari Govind Gaikwad,
(Dismissed as per Addl.Registrar's
Order dt. 4.3.99)
3. Ganu Kondu Gaikwad,
4. Sattu Narayan Gaikwad,
5. Sharavana Keru Gaikwad,

6. Laxman Savala Gaikwad,
(Dismissed as per Addl.Registrar's
Order dt. 4.3.99)

7. Vithu Taru Gaiwad,

All residing of Karanjgaon,
Tal. Bhore, Distt. Pune

..

RESPONDENTS
(Org. Defendants)

...

Mr. S.M.Kazi, Advocate, for appellants.
None for Respondent

CORAM : R.K.Deshpande, J.
DATED : 11th JUNE, 2015.

ORAL JUDGMENT

The trial court passed a decree in Civil Suit No. 44 of 1973 on 30.02.1980, directing the defendants to hand over the possession of the suit land described in para 1 at Sr.No. 1 and 2, to the plaintiffs and the defendants are perpetually restrained from obstructing the possession of the plaintiffs' over the suit land. In Civil Appeal No. 573 of 1984, the Appellate Court by its judgment and order dated 1.10.1991, has reversed the decree passed by the trial Court and the suit of the plaintiff has been dismissed. The plaintiffs are, therefore, before this Court in this second appeal.

2] The trial court has held that the plaintiffs have

established their ownership over the suit lands which are Survey Nos. 37 and 46/1 of village Karanjgaon in the then Bhore State. It has been held that these lands were re-granted in the name of defendant No.1 and the plaintiffs are co-sharers in it. The findings are recorded after taking into consideration the oral evidence of the plaintiff no. 2 and other two witnesses namely Nagnath Apatikar PW-2 and Balasaheb Malekar PW-3. The trial court also relied upon Exh. 13, 14 and 44 which are the extracts of record in respect of Survey Nos. 46, 45 and 37. Relying upon the decision of the Full Bench of this Court in the case of **Laxmibai Sadashiv Date vs. Ganesh Shankar Date**, reported in **LXXIX BLR 234**, the trial Court has held that the rights created under the personal law relating to the parties are not take away by Section 4 of the Watan Abolition Act No.1 of 1959. Though the trial Court accepted that the evidence on record indicating re-grant only in the name of Defendant No.1 and the payment of occupancy price was only by the defendant No.1, it has been held that it must have been after collecting half of the amount from the plaintiffs.

3] The appellate Court while reversing the findings recorded by the trial Court has held that the plaintiffs have failed to establish that they were either the members of the joint family of the defendant No.1 or were the co-tenants in respect of the suit property. The appellate Court also considered the oral evidence of all the witnesses and the documents at Exh. 13, 14 and 44. On

re-appreciation of the evidence, the trial Court disbelieved the witnesses examined by the plaintiffs and further recorded the finding that there is absolutely no evidence brought on record to show that the plaintiffs were the co-owners in respect of the properties along with the defendants, they had paid their occupancy price or part thereof and that they were in possession of the suit property. In the absence of any pleading and proof regarding the plaintiffs being the members of the joint family of defendant no. 1 or the tenants in common, the appellate Court has held that the decision of the Full Bench of this Court relied upon by the trial Court is of no consequence.

4] The matter was admitted on 26.07.1993 stating that the substantial questions of law as are framed in ground nos. (4) and (7) arise in the present matter. The said grounds are, therefore, reproduced below.

- (4) *The learned Appellate Judge has not considered that the forefathers of the Appellants and the respondents were vatandar of the said village and they used to perform duties as the Vatandar.*
- (7) *The learned Appellate Judge has not considered that the fact that though the defendant No. 1 paid the said amount to the Government, right of the Appellants/Plaintiffs over the half portion of the said land has not extinguished and even today they are cultivating the said land to the extent of their half share.*

5] With the assistance of the learned counsel for the appellant, I have gone through the judgment delivered by both the

courts below and the pleading brought to my notice by the learned counsel for the appellant. The dispute pertains to Survey No. 37 and 46/1 of village Karanjgaon in the then Bhore State. The documents at Exh. 13, 43 and 44 are the extract of record maintained by Bhore Sansthan in respect of these lands, which are shown in the record as Inam lands and in the column of Inamdar/Owner, the name of entire Mahar Community as "*Samasta Mahar Hadola*" is shown in respect of Survey No. 46. In respect of Survey No. 37, it is shown to be owned by the entire Mahar Community and in the column of Manager they are shown to be "*Bhaubands*" means brothers. After abolition of Watan by Bombay Inferior Village Watan Abolition Act (Act 1 of 1959), the suit lands were re-granted in the name of defendant no.1. The 7/12 extract in respect of the lands since 1952-53 indicate only the names of the defendants. The trial Court has also recorded the findings that all the receipts about the payment of assessment and in respect of occupancy price in respect of these lands are in the name of the defendants because the defendants have paid the assessment. Both the courts below have referred to the evidence of PW-2 Nagnath Apatikar who has stated in his evidence that the plaintiffs and the defendants used to collect the contribution of all the assessment and one of them used to give it to him as he was *Kulkarni* of the State, entrusted with the job of maintaining the records and collection of revenue from the agriculturists. These facts are not disputed.

6] In the light of the aforesaid undisputed factual position emerging from the record, the findings recorded by the trial Court that the plaintiffs were in possession of the suit land as Watandars and they must have paid half of the occupancy price or revenue in respect of these lands is not supported by any evidence on record. But it is purely a matter of conjectures and surmises. The further finding recorded by the trial Court that the plaintiff being illiterate persons, it is very difficult for them to produce the record showing the registration of their names for the services rendered by them is also a matter of conjectures. In the absence of any documentary evidence showing the possession of the plaintiffs over the suit lands, the appellate Court has taken into consideration the extracts at Exh. 13, 14 and 44 and possible view of the matter is taken that the entries therein such as "*Samesta Mahar Hadola*" and "*Bhaubands*" cannot construed as referring to the plaintiffs. It is not the case of the plaintiffs that they are the members of the joint family of the defendant no.1. A plea of tenants in common has also not been established. The relation of the plaintiffs or their forefathers with the suit lands as Watandars has not been established. The decision of the Full Bench of this Court is, therefore, not applicable. The record stands in the name of the defendant no.1 as *grantee* from the State and the plaintiffs have failed to establish ownership/title over the suit property. The substantial questions of law framed by this Court are answered

accordingly. The second appeal is dismissed.

(R.K.Deshpande, J.)

Rvjalit/P.A.