

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

**Second Appeal No. 73 of 1988**

- 1) Goroba Ravan Gavli.  
2) Daji Ravan Gavli. **.. Appellants.**

**Versus**

- 1) Nana Gana Gavli  
Since died through legal  
representatives
- 1A) Bhamabai w/o Nana Gavali,  
Age 70 years,  
Occupation : Household,  
R/o Post Gangapur,  
Chincholirao,  
Taluka & District Latur.
- 1B) Parwati d/o Nana Gavli  
Since married  
Parwati w/o Amrat Waydande  
Age 40 years,  
Occupation : Household,  
R/o Niwli, Post Niwli,  
Taluka & District Latur.
- 1C) Ujjawalabai d/o Nana Gavli,  
Since married  
Ujjawalabai w/o Bali Rasal,  
Age 38 years,  
Occupation : Household,  
R/o At Post Gangapur,  
Taluka & District Latur.
- 1D) Madhubai d/o Nana Gavli,  
Since married :  
Madhubai w/o Garoba Rasal,  
Age 44 years,

Occupation : Household,  
R/o At Tatborgaon, Post Apegaon  
Taluka Ambajogai,  
District Beed.

1E) Chayabai d/o Nana Gavli,  
Since married:  
Chayabai w/o Namdev Ghodke  
Age 42 years,  
Occupation: Household,  
R/o At Post Utti, Taluka Ausa,  
District Latur.

1F) Laxmibai d/o Nana Gavli,  
Since married  
Laxmibai w/o Nandu Ghodke,  
Age 40 years,  
Occupation: Household,  
R/o At Tawasi, Post Belkund,  
Taluka Ausa, District Latur.

1G) Parmeshwar s/o Nana Gavli,  
Age 37 years,  
Occupation: Agriculture,  
R/o At Chincholi-rao,  
Post Gangapur,  
Taluka & District Latur.

1H) Vimal d/o Nana Gavli,  
Since married  
Vimal w/o Bapu Jogdand,  
Age 35 years,  
Occupation: Household,  
R/o At Post Bardapur,  
Taluka Ambajogai,  
District Beed.

2) Annasaheb Janakrao Darekar.

3) Mohanrao Santram Darekar.

**.. Respondents.**

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Shri. N.P. Patil Jamalpurkar, Advocate, for appellant No.1.

Appeal abated as against appellant No.2.

Shri. B.B. Dahiphale, Advocate for respondents 1A to 1H.

Shri. V.D. Salunke, Advocate, for respondent No.2.

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**CORAM: T.V. NALAWADE, J.**

**DATE : 16<sup>th</sup> MARCH 2016**

**JUDGMENT:**

1) The appeal is filed to challenge the judgment and decree of Regular Civil Appeal No.58/1983 which was pending in District Court Latur. The appeal filed by the present respondent Annasaheb Darekar is allowed by the first appellate Court and the decision given by the Civil Judge, Junior Division, Latur in Regular Civil Suit No.522 of 1977 by which the relief of injunction was given in favour of the present appellant is set aside and the suit is dismissed. Both the sides are heard.

2) The suit was filed in respect of agricultural land bearing Survey No.185/A situated at village Chincholi-Rao, Tahsil Latur. It is the case of the plaintiffs Goroba

and Daji that their father Ravan was protected tenant and he was in possession of this land and so as per provisions of the Hyderabad Tenancy and Agricultural Lands Act declaration was made in his favour under section 32-E and order was made to issue certificate of ownership in favour of Ravan. It is their case that they had paid the charges for getting certificate and accordingly certificate was issued.

3) The suit was filed in respect of area of 8 acres 33 gunthas from land Survey No.185/A and the boundaries of this portion were given. It is the case of the plaintiffs that, the name of their father was entered in the revenue record of the land as owner and defendant No.1, Nana, uncle of the plaintiffs, real brother of Ravan had no concern whatsoever with the suit property. It is contended that during implementation of the consolidation scheme some false record was created by defendant No.1 by joining hands with the officer and then name of defendant No.1 was entered for some portion of this land as the owner. It is contended that defendant No.1 has probably alienated some portion under sale deed to defendant No.2.

Relief of declaration was claimed that the plaintiffs are owners of 8 acres 33 gunthas of Survey No.185/A and relief of injunction was claimed in respect of that portion.

4) Defendant No.1 did not appear in the suit and *ex parte* order was made against him. Defendant Nos.2 and 3 filed joint written statement. They contended that defendant No.1 had share in the land Survey No.185/A and accordingly his name was entered as owner and the person in possession of the said portion. It is contended that Survey No.185/A was divided into two pieces and Block No.334 which was formed during implementation of consolidation scheme was allotted to defendant No.1. It is contended that the defendants were already having some portion in Survey No.185/A and to their portion different block number was given like Block No.332. It is contended that Block No.334 was sold by defendant No.1 for lawful consideration to the defendants under registered sale deed and they got possession also of this property from defendant No.1. It is contended that prior to making the sale deed, defendant No.1 had taken permission of the Collector to transfer the property as in the past the

property was given under the provisions of the Tenancy Act. They had prayed for dismissal of the suit.

5) On the basis of the aforesaid pleadings issues were framed. Both the sides gave evidence. The trial Court gave relief only of injunction as against defendant Nos.1 to 3. Cost was not imposed on defendant No.3 as defendant No.3 compromised the dispute with the plaintiff and he admitted the claim of the plaintiffs.

6) In the appeal filed by defendant No.2, the first appellate Court has set aside the decision of the trial Court and the suit is dismissed. The first appellate Court has considered the record of consolidation and other revenue record and has held that this record was created after considering the actual possession and after making inquiry and the property Block No.334 was owned by defendant No.1.

7) Both sides have given oral evidence but there is sufficient record of consolidation and revenue record and so that record needs to be given more importance. There

is 7/12 extract in respect of Survey No.185/A at Exhibit 4 showing that Ravan, father of the plaintiff was having 8 acres 33 gunthas portion and certificate was issued in his favour under section 50-B of the Hyderabad Tenancy Act. In favour of the defendants also entry was made to show that they were having the remaining area in this survey number. There is some record prepared during implementation of consolidation scheme and it shows that in the name of Mohan Darekar there were two portions like Survey Nos.185/2 and 185/3. The record shows that Survey No.185/1 was standing in the names of both the plaintiffs and defendant No.1 and their portions were divided into Survey No.185/1B (portion of plaintiff) and Survey No.185/1A (portion of defendant No.1). The record shows that Ravan, father of the plaintiff had not paid purchase price under Tenancy Act. It is not disputed that the total area of 13 acres 10 gunthas which was initially shown as Survey No.185/A in the revenue record was divided into three blocks like Block Nos.332, 333 and 334. The record of consolidation shows that Block No.333 was entered in the names of the plaintiffs, Block No.332 was entered in the name of defendant No.2 and Block No.334

was entered in the name of defendant No.1 (Exhibit 23). Exhibit 23 further shows that defendant No.1 Nana was in possession of Block No.334 admeasuring 1 hectare 20 R and he had taken crops in entire portion.

8) The revenue record shows that firstly name of only Ravan was entered for the portion of 8 acres 33 gunthas but subsequently names of his sons and the name of defendant No.1 were also entered in the revenue record and different blocks were allotted to the plaintiffs and defendant No.1. In view of the revenue entries and the mutations it needs to be presumed that when the consolidation scheme was implemented, the parties were in possession of the portions shown in the new block numbers and prior to that also they were in separate possession of their respective shares. Ravan was elder to defendant No.1 and the parties are Hindus. In view of these facts and as there is no explanation and as the entries were not challenged by the plaintiffs probability is created that Ravan and his brother, defendant No.1, were jointly having 8 acres 33 gunthas, but as the elder brother, Ravan got entered his name in the revenue

record. The portion was then divided and the names of defendant No.1 and the heirs of Ravan were entered in the revenue record. Admittedly, the record created during implementation of the consolidation scheme and also the aforesaid revenue record was never challenged by the plaintiffs.

9) It is not disputed that defendant No.1 entered into an agreement with defendant No.2 and he sold the portion like Block No.334 under registered sale deed dated 4-12-1976 to defendant No.2. The name of defendant No.2 was entered in the revenue record (Exhibit 76) on the basis of sale deed and his name was entered in the crop cultivation column also. Exhibit 76 shows that in the year 1981 defendant No.2 was cultivating the portion purchased from defendant No.1. It is already observed that in the year 1975-76 Nana, defendant No.1 was in possession of Block No.334 and so inference is easy that he handed over possession to defendant No.2 under the sale deed.

10) The record of the trial Court does not show that plaintiffs made attempt to produce revenue record to show that they were in possession of Block No.334 on the date of the suit. The suit was filed in the year 1977 and there is aforesaid record to show that on the relevant date and also subsequent to the relevant date defendant Nos.2 and 3 were in possession of Block No.334. This block was created from a part of Survey No.185/A. In view of this circumstance, the Court could not have given relief of injunction in favour of the plaintiffs. The trial Court gave much importance to the record created under the Hyderabad Tenancy Act and ignored the position of Hindu law and the aforesaid circumstances. The first appellate Court has rightly corrected that error by considering the record and also oral evidence. At the time of admission of the appeal this Court had expressed that substantial questions of law will be formulated on the basis of Ground Nos.2,7 and 12 of the appeal memo. So, following substantial questions of law are required to be considered in the present matter :-

(I) whether the first appellate Court has committed error in giving importance to the record of implementation of consolidation scheme and giving finding that on the basis of that record as defendant No.1 was owner of Survey No.185/1A ?

(II) whether the first appellate Court has committed error in holding that defendant No.1 had become owner even when Ravan, brother of defendant No.1, was declared as owner under the provision of section 32-E of the Hyderabad Tenancy Act ?

(III) whether the first appellate Court has committed error in holding that defendant No.1 was in possession in view of the record created during implementation of the consolidation scheme and in further holding that this portion had come to his share during partition between him and successors of Ravan ?

11) The aforesaid discussion shows that the first appellate Court has correctly appreciated the facts and the law. Even if the certificate of ownership was issued in favour of Ravan under the Tenancy Act, he was elder in the family and it needs to be presumed that he had taken the certificate for himself and for defendant No.1. The subsequent development like entering of name of

defendant No.1 in the revenue record and the circumstance that the authority which implemented the consolidation scheme found the defendant No.1 in possession of Survey No.185/1A are sufficient to infer that property was of joint ownership of Ravan and defendant No1 and that is why Survey No.185/1A was found in possession of defendant No.1. As the parties were Hindu there was no question of transfer of any title by giving certificate in favour of defendant No.1 by the authority under the aforesaid Act and there was pre-existing right of defendant No.1, this Court holds that in view of the aforesaid material and position of law, the first appellate Court has not committed error in setting aside the decision of the trial Court and refusing the relief of even injunction in favour of the plaintiffs.

12) One more point was argued by the learned counsel for the respondent original defendant No.2. He submitted that during pendency of the present appeal, appellant No.2 died and his appeal was abated. He submitted that due to abatement of the appeal filed by appellant No.2, the entire proceeding needs to be treated

as abated. This submission is not at all acceptable. The cause of action continues. For the branch of Ravan, two plaintiffs had filed the suit and the remaining appellants had right to continue the proceeding. His interests were not conflicting with the interests of the deceased appellant No.2.

13) Learned counsel for the appellant has placed reliance on the following reported cases :

- (1) **1994(1) Bom.C.R. 368 (Prabhakar Kushaba Hagwane v. Yashwant Bhau Hagwane);**
- (2) **2011 (6) Bom.C.R. 614 (Namdeo Bhau Chavan v. Shantabai Kundlika Chavan);**
- (3) **2008 (4) Bom.C.R. 669 (Hemdas Premdas Ranbakuda v. Surajbai Dhansao Sahu)**
- (4) **AIR 1973 SC 2451 (Gorakh Nath Dube v. Hari Naraian Singh);**
- (5) **AIR 1963 SC 507 (State of Punjab v. Suraj Prakash Kapur);**
- (6) **AIR 1959 Punjab 206 (Kundan v. Sardara Hamji Lal)**
- (7) **AIR 1975 SC 371 (Charan Singh v. Darshan Singh);**
- (8) **2007 (2) Mh.L.J. 344 (Baba Hari Mohite v. Dinkar Ramchandra Sapkal);**
- (9) **AIR 2003 SC 2588 (S Amarjit Singh Kalra v. Smt. Pramod Gupta);**
- (10) **2011 (5) Mh.L.J. 727 (Shankar v. Ananda).**

14) Similarly learned counsel for respondent No.2 placed reliance on the following reported cases :-

- (1) **2007(3) ALL MR 371 (SC) (Ramji Rai v. Jagdish Mallah);**
- (2) **2007(2) Mh.L.J. 296 (Chandrashekar Shankarrao Kulkarni v. Rahul Shikshan Prasarak Mandal);**
- (3) **(2004) 13 SCC 480 (Nagappan v. Ammasai);**
- (4) **AIR 2002 HP 141 (Dummu Ram v. Madan Lal);**
- (5) **2007 (4) Mh.L.J. 43 (Kisan v. Kausalyabai);**
- (6) **AIR 1963 SC 1901 (Rameshwar Prasad v. Shambehari Lal Jagannath);**
- (7) **AIR 1966 SC 1427 (Sri Chand v. M/s Jagdish Pershad Kishan Chand);**
- (8) **AIR 1999 SC 1077 (Badni v. Siri Chand);**
- (9) **AIR 1973 SC 204 (B.S. Singh v. R.D. Singh);**
- (10) **1999 (1) Mah LR 75 (Mahendra v. Shrimati P. Shah);**
- (11) **(2004) 13 SCC 480 (Nagappan v. Ammasai);**
- (12) **2007(4) Bom.C.R. 219 (Kaushalyabai B. Pateriya v. Hiralal B. Gupta);**
- (13) **AIR 1962 SC 89 (State of Punjab v. Nathu Ram);**
- (14) **AIR 1963 SC 553 (Ram Sarup v. Munshi);**
- (15) **AIR 1959 Orissa 148 (Raghu Sutar v. Nrusingha);**
- (16) **2001 (2) Mh.L.J. 576 (Yeshwant v. Shankar);**
- (17) **1991 Mh.L.J. 669 (Gunda Tuka v. Pandharinath);**

(18) **2015 (6) Mh.L.J. 450 (Laxman vs. Raghunath);**

(19) **1998(3) Mh.L.J. 834 (Shevantabai v. Ramu Rakhamaji).**

15) This Court has carefully gone through the observations of the Apex Court, this Court and also the other High Courts in the cases cited supra. They are on the point of the effect of the record created during implementation of consolidation scheme. Some cases are on the point of abatement of matter due to death of one of the appellants and its effect on the remaining matter. Facts and circumstances of each and every case are always different. While coming to the conclusion, this Court had kept in mind the observations made by the Apex Court, this High Court and also the other High Courts in the cases cited supra. So, the points are answered in negative. As no interference is possible in the decision given by the first appellate Court following order is passed:-

16) The appeal stands dismissed.

Sd/-  
(T.V. NALAWADE, J. )

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