

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

Second Appeal No. 170 of 1987

- 1) Abrubegum w/o Mohd. Tajuddin,
Age 60 years,
Occupation: Household,
R/o Mangalwara locality, Hingoli,
Taluka Hingoli, District Parbhani.
- 2) Sajedabegum w/o Mumtajuddin,
Age 30 years,
Occupation: Household,
R/o Hingoli Gate, Nanded.
- 3) Joharabgum w/o Abdul Aziz
Age 32 years,
Occupation : Household,
R/o Mangalwara locality,
Hingoli, District Parbhani. .. **Appellants.**

Versus

- 1) Sugrabegum w/o Mohd. Wahiduddin
Age 35 years,
Occupation : Household,
R/o Hingoli, District Parbhani.
- 2) Nazimuddin s/o Mohd. Wahiduddin.
Died, through legal representative:
- 2A) Azizzonissa Begum W/o Nazimuddin
Age 44 years, Occupation: Service,
R/o H. No.41/41/9, Nimboli Adda,
Near Traffic Naka, Hyderabad (A.P).
- 3) Azimuddin s/o Mohd. Wahiduddin,
Age 26 years,
Occupation: Service,
R/o Parbhani.

- 4) Gausuddin Mohd. Wahiduddin,
Age 23 years,
Occupation & R/o As above.
- 5) Kalimuddin s/o Mohd. Wahiduddin,
Age 22 years,
Occupation & R/o As above.
- 6) Faimuddin Mohd. Wahiduddin,
Age 19 years, Occupation: Student,
R/o Hingoli, District Parbhani.
- 7) Hafizasultana Begum w/o Anwaruddin.
Died through legal representatives
- 7/1) Anwaruddin s/o Azeeddin,
Age 46 years
Occupation: Agriculture,
R/o La Takali,
Taluka and District Parbhani.

(R.7(1) deleted vide Court's order
dated 9-3-2010)
- 7/2) Mohd. Minhayuddin s/o Anwarduddin
Age 14 years,
Occupation: Student,
under guardianship Anwaruddin
S/o Azeemuddin.
- 7/3) Tamiji Begum w/o Baban,
Age 22 years, Occupation Household
R/o Indira Nagar, Baijipura,
Aurangabad.
- 8) Khatijbegum w/o Abdul Hussain,
Age 50 years, Occupation : Household,
R/o Parli Vaijnath, Taluka Ambajogai,
District Beed.
- 9) Afsar Fatema Begum w/o Mohd. Moinuddin
Age 19 years,
occupation : Household.

R/o Dharmabad, District Nanded
C/o M.M. Khan, Assistant Teacher,
Zilla Parishad, High School,
Dharmabad.

- 10) Ruksana Begum d/o Mohd. Wahiddun
Died, through legal representatives
- 1] Abdul Matin s/o Mohd. Abdul Aziz
Age Major,
Occupation : Bill Collector,
Nagar Parishad, R/o Ekbal Nagar,
Parbhani.
- 2] Abdul Raheman S/o. Abdul Matin
Age Major, Occupation: Business,
R/o Ekbal Nagar, Parbhani.
- 3] Ume Habiba w/o Ashfaq
Age Major, Occupation: Household,
R/o Yusufiya Colony, Parbhani. .. **Respondents.**

Shri. A.S. Bajaj, Advocate, for appellants.

Smt. C.S. Deshmukh, Advocate, for respondent Nos.1 6, 7
(iii), 9 and 10.

Shri. G.R. Sayyed, Advocate, for respondent No.10.

CORAM: T.V. NALAWADE, J.

DATE : 20 JULY 2016

JUDGMENT:

- 1) The appeal is filed against the judgment and
decree of Regular Civil Appeal No.199/1983 which was
pending in the District Court Parbhani. The appeal was

filed by the present respondents/defendants against the judgment and decree of Special Civil Suit No.19/1976 which was pending in the Court of the Civil Judge, Senior Division, Parbhani. The suit was filed for relief of possession on the basis of title by respondents and it was dismissed by the trial Court. The first appellate Court has given decree of possession. Heard both the sides.

In short, the facts leading to the institution of the appeal can be stated as under :-

2) The suit was filed in respect of house property. It is the case of the plaintiff that prior to the year 1930 amount of Rs.50/- was paid to him by his grand father on maternal side for purchasing the property and by using this amount suit property was purchased for the plaintiff under sale deed from one Sk. Mahboob. The suit was prosecuted by legal representatives of Mohammad Wahidoddin, the plaintiff. It is the case of the plaintiff that initially there was dilapidated structure on the property purchased by him and in the year 1341 Fasli (1931 AD) permission was obtained by plaintiff and his mother to make construction and the present structure was

constructed by him. It is contended that for some time the property was given on lease by them.

3) Defendant No.1 is step mother of plaintiff and defendant Nos.2 and 3 are daughters of defendant No.1. It is the case of the plaintiff that his father died in the year 1952. It is contended that at the time of death, his father was having only one property and he had no concern with the suit property. It is contended that he had allowed defendant No.1 to live in the suit property in view of the relationship. It is contended that defendant No.1 has illegally transferred the suit property under sale deeds to her daughters namely defendant Nos.2 and 3. It is contended that those sale deeds are void and no title has passed to the defendant Nos.2 and 3. It is contended that due to these transactions made by defendant No.1, cause of action took place for the suit. Possession was claimed on the basis of title and the suit was filed in the year 1976. The sale deeds were executed in the year 1975.

4) Defendant Nos.1 to 3 filed joint written statement. They admitted relationship with the plaintiff. They have, however, denied that the property belongs to

the plaintiff. They contended that the property was owned by Mohd. Tajuddin, father of the plaintiff and husband of defendant No.1. It is contended that Mohd. Tajuddin was owner of 5 houses and during his lifetime he had effected partition and had given the properties to the wives and issues born from the wives. It is contended that the suit property was given to defendant No.1 by Mohd. Tajuddin in the year 1952 and since then she was enjoying the property as owner. They have admitted that the property is transferred to defendant Nos.2 and 3 under the sale deeds.

5) On the basis of the aforesaid pleadings issues were framed. Both the sides gave evidence. The trial Court had held that the suit property was owned by Mohd. Tajuddin, father of the plaintiff and he had given the property to defendant No.1 in the family arrangement, partition. The District Court has held that the suit property was purchased for plaintiff and plaintiff is absolute owner of the property. In view of this finding, possession decree is given by the first appellate Court.

6) This court admitted the appeal on the following substantial questions of law :

(I) Whether Sk. Mahaboob Sk. Chand shown as vendor in Exhibit 59, sale deed executed in favour of plaintiff was owner of the suit property ?

(II) Whether the District Court has committed error in using Exhibit 59, sale deed, in evidence, for proof of title of the plaintiff ?

7) Sugrabegum, widow of the plaintiff has given evidence which is as per the pleadings in the plaint. Plaintiff has relied on the record like sale deed (Exhibit 59), mutation made in the record of assessment and the record of inquiry conducted by the city survey office. Reliance was also placed on tax receipts of old period and the construction permission given by the local body to the plaintiff to make construction over the suit property.

8) Exhibit 59, sale deed, shows that it was written on stamp paper and the property was purchased in 1332 Fasli (1922 AD). This document was produced in Court in 1976, after more than 30 years and so necessary

presumption is used by the District Court which is available under section 90 of the Evidence Act. This document shows that the property was purchased for consideration of Rs.50/- in the name of plaintiff Mohd. Wahidoddin and his grandfather on maternal side, Sarvaroddin s/o Asafuddin had purchased it as guardian of the plaintiff. The property was purchased from Shaikh Mahboob Shaikh Chand. Name of the scribe is there and the scribe is examined by the plaintiff for proving the contents. Further, original document is also there for proof of the contents.

9) It is not disputed that the aforesaid document is in respect of the suit property. The dispute now raised is that the vendor was not owner of the suit property. It is not the case of the defendants that the property was purchased by Tajuddin, father of the plaintiff in the name of the plaintiff. As the property was purchased in the name of the plaintiff by his grandfather, on material side, burden was heavy on the defendants to prove that the property was belonging to Tajuddin, husband of defendant No.1.

10) There is record of construction permission at Exhibit 4/3 of 1341 Fasli. This record contains plan of the construction with blue copy approved by the local body. At Exhibit 48 there is order of Tahsildar, the authority at the relevant time for giving construction permission. This record is consistent with the case of the plaintiff.

11) It is not disputed that the suit property was given House No.1383 in the assessment record of local body. At Exhibits 62, 63, 65 and 66 are the tax receipts produced by the plaintiff starting from the period 1953-54 and it is for the period up to 1965-66. Thus, plaintiff was paying the house tax and this record is also consistent with the case of the plaintiff.

12) At Exhibit 76 there is record of inquiry made by the city survey office in the year 1979. It appears that behind back of the plaintiff, on the basis of sale deeds executed in favour of defendant Nos.2 and 3, entry of their names was made and this entry was challenged. After the inquiry the authority came to conclusion that the property was never standing in the name of Mohd. Tajuddin, father

of the plaintiff and as the property was not belonging to defendant No.1 there was no question of making mutation on the basis of so called sale deeds. Admittedly, this decision of the authority was not challenged by the defendants. At Exhibit 84 a copy of revision register in respect of house property for year 1358 Fasli (1948 AD) is filed for defendants and it shows that defendant No.1 was shown as occupant. At Exhibit 83 there is one more copy of register of revision for the year 1971-72 and at Exhibit 85 tax receipts are produced but they for the period starting from the year 1971-72. No record is produced to show the basis on which the defendant no.1 was shown as occupant in the revision register. In any case, such entries are made only for recovering the house tax. As against this record there is record of aforesaid nature in favour of the plaintiff which includes the record of city survey office which is prepared on the basis of the title document.

13) The parties are Muslim. If the husband of defendant No.1 was owner, it was necessary to show that the property was standing in the name of husband of the defendant No.1 at any time. Even if it is presumed that he

was owner, as he was Muslim, he could not have partitioned the property amongst his wives and so no title would have passed to defendant No.1 on the basis of so called partition. Further, there is no such record of partition. After the death of the father, husband of defendant No.1, the plaintiff would have got share as per Muslim Law and so defendant No.1 could not have claimed that she was absolute owner of the suit property. The conduct of defendant No.1 of executing two sale deeds in favour of her daughters, defendant Nos.2 and 3, shows that these defendants were bent upon to create complications. They failed in proving title in the office of city survey even after execution of the sale deeds which were apparently executed for creating complication.

14) Civil cases are required to be decided on the basis of preponderance of probabilities. There is record in support of the plaintiff which is of the year 1922 AD. This record is of both the title and of assessment of house tax. This record consists of the construction permission given in favour of the plaintiff in the year 1931 AD. In view of these circumstances, it cannot be said that the property

was standing in the name of husband of defendant No.1 at any time and the vendor of the plaintiff shown in Exhibit 59 was not owner of the suit property. The sale deed is document of more than 30 years old and so there is presumption of due execution. Further the scribe is examined and original sale deed is produced in the Court for proving the contents. Value of the property was less than Rs.100/- at the relevant time. In view of this record and circumstances, District Court has held that the plaintiff is the owner of the property and decree of possession is given on the basis of title.

15) Learned counsel for the appellants placed reliance on some reported cases. In the case reported as **(2005) 9 SCC 359 (Gangamma v. Shivalingaiah)** the Apex Court has discussed the provisions of sections 61 to 63, & 92 and 90 of the Evidence Act. In view of nature of the dispute, the Apex Court observed that even if it is presumed that formal execution of document is proved, due to presumption, there is no presumption that recitals are also correct and they are subject to provision of sections 91 and 92 and so it is open to raise plea contrary

thereto. There is no dispute over this proposition. No such plea was raised even when original sale deed was produced. No evidence is given to create probability that the vendor of the plaintiff was not the owner and husband of defendant No.1 was the owner of the property.

16) In the case reported as **(1996) 6 SCC 223 (Sawarni v. Inder Kaur)** the provision of Land Revenue Code of U.P. are discussed and it is observed that mutation made in revenue record neither create nor extinguish the title and they have no presumptive value relating to the title. There is no dispute over this proposition. When there is record of mutation which has the basis of document like sale deed, these circumstances can be definitely used for proof of the title.

17) Learned counsel for the appellants placed reliance on the case reported as **(1998) 4 SCC 539 (Punjab Urban Planning & Development Authority v. Shiv Saraswati Iron & Steel Re-rolling Mills)**. In this case the Apex Court has discussed the effect of provisions of sections 101 and 102 of the Evidence Act. There cannot

be dispute over the proposition made in this case. The plaintiff has given necessary evidence for proof of the title in the present matter and so the observations made by the Apex Court are of no use to the appellants, defendants. Learned counsel placed reliance on the case reported as **(1998) 9 SCC 719 (Ram Das v. Salim Ahmed)**. In that case also defence was taken that the property was not belonging to the vendor. In view of the facts of the said case decision was given against the purchaser. Facts of the present matter are different. Reliance was also placed on the case reported as **AIR 1954 SC 526 (Moran Mar Basselios Catholicos v. The Most Rev. Mar Poulouse Athanasius)**. The facts of the reported case were altogether different. The point involved in it was also different.

18) In the result, both the points are answered against the appellants and the appeal is dismissed. The learned counsel for the appellants seeks time as he wants to challenge the decision of this Court. Six weeks time is given.

rsl

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