

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 41 OF 1992

1. Shankar S/o Rama Ghogre,
(Died) Through his L.Rs.
 - 1.A) Vinyakat S/o. Shankar Ghogre
Age 45 years, Occu: Agri,
 - 1.B) Purushottam S/o. Shankar Ghogre
Age 40 years, Occu: Agri,
 - 1.C) Sanjay S/o. Shankar Ghogre
Age 38 years, Occu: Agri,
 - 1.D) Hanumant S/o. Shankar Ghogre
Age 35 years, Occu: Agri,
 - 1.E) Amrut S/o. Shankar Ghogre
Age 32 years, Occu: Agri,
 - 1.F) Sow. Kalinda W/o. Udhav Shince
Age 42 years, Occu : Household,
 - 1.G) Sow. Vijayabai W/o Kalyan Landge
Age 30 years, Occu: Household,
All R/o. Takalgaon Tq. Ahmedpur,
Dist. Latur.
2. Madhav S/o Nagorao Ghogre
(Died) Through his L.Rs.
 - 2.A) Giridhar S/o Madhav Ghogre,
Age 38 years, Occu: Agri,
R/o Takalgaon (Ka), Ahmedpur
Dist. Latur.
3. Waman S/o Nagorao Ghogre,
Age 37 years, Occu.: Service,
R/o Takalgaon, at present
Clerk in Panchayat Samiti,
Ausa.

4. Chandrakala W/o Rangnath Jadhav
(Died) Through his L.Rs.
- 4.A) Rangnath S/o Rama Jadhav
Age 75 years, Occu: Agri,
- 4.B) Pratap S/o Rangnath Jadhav
Age 45 years, Occu: Agri,
- 4.C) Soudagar S/o Rangnath Jadhav
Age 42 years, Occu: Agri,
- 4.D) Ramakant S/o Rangnath Jadhav
(Died)
- 4.E) Rameshwar S/o Rangnath Jadhav
Age 26 years, Occu: Agri,
- 4.F) Sarswati W/o Rangnath Jadhav
Age 37 years, Occu: Agri,
- 4.G) Alka W/o Rangnath Jadhav
Age 28 years, Occu: Agri,
All R/o Ambulga Tq. AUSA
Dist. Latur.
5. Mathurabai W/o Nagorao Ghogre,
Age 65 years, Occu: Household,
R/o Takalgaon, Tq. Ahmedpur
6. Vithal S/o Narayan Bhande
(Died) Through his L.Rs.
- 6.A) Anand S/o Vithal Bhande
(Died)
- 6.B) Ashok Vithal Bhande
Age 55 years, Occu: Agri,
- 6.C) Vinayak S/o Vithal Bhande
Age 50 years, Occu: Agri,
- 6.D) Suman D/o Vithal Bhande (Married)
Age 45 years, Occu: Agri,

6.E) Sulochana D/o Vithal Bhande (Married)
Age 40 years, Occu: Agri,

6.F) Girjabai W/o Vithal Bhande
Age 80 years, Occu: Nil,
All R/o Fattepur Tq. Ahmedpur
Dist. Latur.

....Appellants.
(Ori. defendents)

Versus

1. Godawaribai W/o Sanjaprao Ghogre,
Age 55 years, Occu: Household and
Agril., R/o Takalgaon, Tq. Ahmedpur.

2. Sukumar S/o Prabhakar Dhone,
Age 30 years, Occu: Household,
R/o Makni, Tq. Ausa.

....Respondents.
(Ori. Plaintiffs)

Mr. M.L. Dharashive, Advocate for appellants.

Mr. Ashutosh Kulkarni h/f. Mr. A.N. Nagargoje, Advocate for
respondent Nos. 1 and 2.

CORAM : T.V. NALAWADE, J.
DATED : 22nd June, 2016.

JUDGMENT :

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No. 28/1974, which was pending in the Court of Civil Judge, Junior Division, Ahmedpur, District Latur and also to challenge the judgment and decree of Regular Civil Appeal No. 173/1984, which was pending in the Court of Additional District Judge, Latur. The suit filed for relief of

possession of share of plaintiffs in agricultural land is decreed by the Courts below. The Trial Court had held that the two plaintiffs together are entitled to 5/16th share in the suit properties and the First Appellate Court has modified the decree to make it 1/3rd. The original defendants have challenged the decision. Both the sides are heard.

2) Plaintiff No. 1 is mother of plaintiff No. 2. One Sanjaprao Ghogre was the husband of plaintiff No. 1 and he was successor of his father Rama in respect of the suit properties. Rama had left behind two more sons like Nagorao and Shankarrao. Defendant No. 2 to 5 are successors of Nagorao. Defendant No. 1 is the only surviving son of Rama.

3) It is the case of plaintiffs that Rama was the owner of suit lands like Survey No. 32/B, admeasuring 9 Acres 31 Gunta, Survey No. 33/B, admeasuring 8 Acres 33 Guntas, and Survey No. 34/A, admeasuring 10 Acres 34 Gunta, all lands situated at Takalgaon. It is contended that Rama died in the year 1959 and the husband of plaintiff No. 1 died about 15 years prior to the date of suit.

4) It is the case of plaintiffs that they are entitled to get

1/3rd share in the suit properties as they are successors of one son of Rama and the said son had equal share along with the two other sons of Rama in suit properties. It is contended that after the death of Rama, the names of sons of Nagorao were entered in the revenue record as Nagorao was the eldest son, and he was also dead. It is contended that the family remained joint and no partition had taken place amongst plaintiffs and defendants. It is contended that after the death of husband, plaintiff No. 1 had shifted to her parents house along with plaintiff No.2, but partition had not taken place.

5) It is the case of plaintiffs that in the year 1972, she asked the defendants to give separate share of plaintiffs by partitioning the properties and initially they had agreed to do it, but subsequently they avoided to give the share of plaintiffs and so, cause of action took place for the suit. It is contended that false revenue record was created by the defendants in their names, but due to such revenue record, the plaintiffs have not lost their right to get their share separated.

6) The defendants filed joint written statement. They admitted the relationship. They contended that Rama had died in the year 1955. They admitted that the name of defendant No.

2 was entered in the revenue record in the year 1958.

7) The defendants contended that defendant Nos. 1 and 2 had given suit land on lease basis, Batai basis to defendant No. 6 in the year 1962. It is contended that there were some antecedent debts and amount was required for marriage of daughter of plaintiff No. 2 also and so, the suit lands were sold to defendant No. 6 as he had preferential right under tenancy right. They contended that under the Hyderabad Tenancy and Agricultural Lands Act, sale certificate was also issued in favour of defendant No. 6 in the year 1966. They contended that defendant No. 1 then purchased the suit lands from defendant No. 6 on 20.1.1973 for consideration of Rs. 5,000/- and so, only defendant No. 1 is the owner of all the lands. They contended that matter needs to be referred to the Tenancy Court as the lands were with defendant No. 6 as protected tenant.

8) On the basis of aforesaid pleadings, issues were framed. Both the sides gave evidence. Both the Courts below have held that the so called record of tenancy created in favour of defendant No. 6 was created due to collusion between defendants and their intention was to deprive the plaintiffs of

their share in the suit properties. The Court below have held that such record is not binding on the plaintiffs. The circumstance that allegedly the lands were sold for consideration of Rs. 15,000/-, but the lands were reconveyed for only consideration of Rs. 5,000/- is held against the defendants. This Court admitted the appeal on 2.3.1992 by holding that substantial questions of law needs to be formulated on the basis of ground No. 2 mentioned in the appeal memo. The substantial question of law is suggested as under :-

(i) Whether in view of provision of section 99 of Hyderabad Tenancy and Agricultural Lands Act, the Civil Court had no jurisdiction to decide the dispute and the Courts ought to have referred the dispute to Tenancy Court and the Court had no power to hold that the certificate can be set aside or it is not binding on the plaintiffs ?

9) The defendants have not disputed that the suit properties were ancestral properties of the successors of Rama. Though they have tried to contend that predecessor in title of plaintiff viz. Sanjaprao died prior to Rama, no such record was produced when burden was on defendants to prove such case. It can be said that after 1956, Sanjaprao died, leaving behind the

plaintiffs. It is not the case of defendants that partition was effected by them and separate share was given to the plaintiffs. They are relying mainly on the circumstance that the properties were shown to be transferred to defendant No. 6 and then it was again transferred to defendant No. 1. This case was also required to be proved by the defendants.

10) Exh. 80, the first mutation made in favour of defendant Madhav, son of Nagorao shows that only because he was son of eldest issue of Rama, his name was mutated in the revenue record in the year 1958. Madhav has given evidence that after the death of Rama, the lands were mutated in his name. He has tried to say that husband of plaintiff No. 1 died in the year 1951. Even if that evidence which has no basis of pleadings is accepted as it is, it can be said that in view of the provisions of the Hindu Women's Rights to Property Act, 1937, plaintiff No. 1 was entitled to succeed to the property of her husband and in view of section 14 of the Hindu Succession Act, 1956, she would have become absolute owner of this share.

11) Madhav has given evidence that he gave the properties to defendant No. 6 for cultivation on Batai basis in the year 1962 and then the name of defendant No. 2 was entered in

the revenue record. He has given evidence that in the year 1966, he executed sale deed in respect of suit lands in favour of defendant No. 6 for consideration of Rs. 15,000/- as he was in need of money. He has given evidence that his brother was receiving education and so, he was in need of money. He has produced some record like Exh. 30/1 to show that there was intervention of revenue authority, but this circumstance is also not believed by the Courts below and rightly so. He has given evidence that in the year 1969, he gave Rs. 4,900/- to plaintiff No. 1, but he has not given evidence that rights were relinquished by plaintiffs in favour of defendants. He has not given evidence that he was providing food and shelter to plaintiffs when they were having share equal to him in the suit lands considering the area of lands and considering their share. Defendants examined Vithal, the so called tenant in support of the case and he has given evidence similar to the evidence of Madhav. His evidence shows that the consideration of Rs. 15,000/- was not deposited in Tahsil Office by him for getting the sale certificate under the provisions of Tenancy Act. The admission of defendant No. 6 that he did not deposit the amount in treasury, has created doubt about the entire case of defendants that defendant No. 6 was genuine protected tenant and in one proceeding, the rights were given to him to purchase

the land. No copy of the order made in that regard is produced though copy of mutation is produced in that regard. Then there is the sale deed executed in favour of defendant No. 1 by defendant No. 6 which is for consideration of Rs. 5,000/-. It cannot be believed that if purchase price was fixed in the year 1966 as Rs.15,000/- under Tenancy Act which is ordinarily on the basis of land revenue, the market price had come down to Rs. 5,000/- in 1973.

12) Due to aforesaid circumstances and as no transaction was for legal necessity and the plaintiffs were not benefited due to the transaction, the Courts below have rightly held that the transaction was not binding on the plaintiffs' share. Plaintiff No. 1 was widow and so no such action under Tenancy Act was permissible. Further, there is clear probability that it was collusive transaction and the intention behind the transaction was to deprive the plaintiffs of their share in the suit properties. The learned counsel for respondents placed reliance on one case reported as **2008 (6) ALL MR 144 Bombay High Court [Lachmabai w/o. Hanumant and Ors. Vs. Vithabai w/o. Laxman Namawar and Gangabai d/o. Laxman]**. It is on the effect of provisions of Tenancy Act and on the requirement of permission of the authority to alienate the property. The

observation made in the aforesaid case are not helpful to the appellants in view of the peculiar facts of the present case. The findings are on questions of fact and they are concurrent. The aforesaid points raised in the appeal is not at all involved in the matter and it is answered against the appellants. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/