

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

SECOND APPEAL NO. 113 OF 2010

1. Ramesh S/o Tukaram Sable
Age : 47 Yrs., Occ. Agril.,
R/o : Village Shelud, Tq.
Bhokardan, Dist. : Jalna,
At present R/o : H.No. 217,
Galli no. 1, Nyayanagar,
Aurangabad.
2. Ananda S/o Natthu Sable
Age : 65 Yrs., Occ. Agril.,
R/o : Village Shelud, Tq.
Bhokardan, Dist. : Jalna,
3. Smt. Kausabai W/o Natthu Sable
Age : 65 Yrs., Occ. Household,
R/o : Village Shelud, Tq.
Bhokardan, Dist. : Jalna,
4. Smt. Gayabai W/o Ananda Sable
Age : 60 Yrs., Occ. Agril.,
R/o : Village Shelud, Tq. **APPELLANTS/**
Bhokardan, Dist. : Jalna, **[ORI. DEFENDANTS]**

V E R S U S

1. Totaram S/o Natthu Sable
Age : 80 Yrs., Occ. Agril.,
R/o : Village Shelud, Tq. **RESPONDENT/**
Bhokardan, Dist. : Jalna, **[ORI. PLAINTIFF]**
2. Suwarna W/o Shriram Dhanraj
Age : 33 Yrs., Occ. Household,
R/o : Khatuwadli Shaikh Wada,
Jogeshwari Zopadpatti, Tq.
Gangapur, Dist. : Aurangabad/
3. Shobha W/o Ramesh More
Age : 29 Yrs., Occ. Household,
R/o : Gummi, Tq. & Dist. :
Buldhana.
4. Sheela W/o Sunil Hiwale
Age : 29 Yrs., Occ. Household,
R/o : Kasgaon, Tq.
Jafrabad, Dist. : Jalna,
[Deleted as per Court's
Order dated 26/06/2009].
5. Mathura W/o Sanjay Jadhav
Age : 27 Yrs., Occ. Household,
R/o : C/o Gaikwada Wada,
Bhimnagar, Bhausingpura,
Aurangabad.
6. Bibi W/o Shriram Jadhav

Age : 22 Yrs., Occ. Household,
R/o : C/o Ramesh Bhalerao
Wada, Galli No. 11, Sanjaynagar,
Mukundwadi, Aurangabad.

7. Amrapali D/o Tukaram Sable
Age : 20 Yrs., Occ. Household,
R/o : Shelud, Tq. Bhokardan, **RESPONDENTS/**
Dist. : Jalna, **[ORI. DEFENDANTS]**

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Mr. Milind Joshi, Advocate for Appellants.

Mr. S.B.Ghute, Advocate for R – 2 & 5.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 29/06/2016

JUDGMENT :

1. The Appeal is filed against the Order of R.C.A. No. 41/1994 which was pending in the Court of the II Ad-hoc District Judge, Jalna. The Appeal was filed by the present respondent/plaintiff of R.C.S. No. 121/1988 which was pending in the Court of the Civil Judge [Jr.Division], Bhokardan, District Jalna. The Suit filed for relief of permanent injunction was dismissed by

the trial Court and that decision is set aside by the first appellate Court by granting the relief in favour of the respondents. Heard both sides.

2. The Suit was filed in respect of the portion of 8 Acres 9 gunthas from land G.No. 72 [old S.No. 18/1] situated at village Shelud, Tahsil Bhokardan, District Jalna. It is the case of the plaintiff that he has purchased the suit property from its owner Sitabai under registered sale deed dated 04/07/1968 for the consideration of ₹ 15,000/-. It is contended that he was put in possession of the suit property and since the date of the sale deed, he has been in possession as owner.

3. Defendant Nos. 1 and 2 are real brothers of the plaintiff. It is the case of the plaintiff that the defendants have purchased some portion which is western portion of aforesaid land from Sitabai. It is contended that the defendants have no concern with the suit property, which belongs to the plaintiff, but they are creating obstruction in the possession of the plaintiff over the suit property. It is the case of the plaintiff that cause of action for the Suit took place on 02/06/1988.

4. The defendants contested the Suit by filing Written Statement. It is their case that the plaintiff, defendant Nos. 1 and 2 and their father were tenants of Sitabai in S.No. 18/1. It is contended that since the life time of the father, plaintiff was 'karta' of joint Hindu family, as their father was simpleton person. It is contended that due to these circumstances, the property was entered in the name of the plaintiff in the revenue record as owner but he is in possession as 'karta' over the suit property. It is contended that the property was purchased in the name of the plaintiff but it belongs to plaintiff and defendants, so relief of injunction can not be given against them. It is their case that R.C.S. No. 40/1978 was filed by the plaintiff against the defendants and Sitabai but the Suit was dismissed and so the present Suit is not tenable. It is, therefore, contended that to deprive the plaintiffs, false Suit is filed.

5. Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. Trial Court held that the sale deed executed in favour of the plaintiff was not proved and plaintiff further failed to prove that he is in lawful possession of the suit property. The first

appellate Court has held that the defendants have not disputed the fact that the sale deed was executed in the name of the plaintiff and so the contents of the sale deed can be read. It is also held that as it was registered sale deed, there was no need of examination of attesting witnesses to prove the contents. The District Court has considered the revenue record showing the possession of the plaintiff and on that basis permanent injunction is given in favour of the present respondents.

6. This Court has gone through the reasonings given by the Courts below and also the record. The evidence of the plaintiff is in accordance with the aforesaid pleadings in the plaint. He examined one Sonawane, the owner of the adjacent land, in support of his case. The evidence is given that the plaintiff is in possession of the suit property. The tenor of cross examination of this witness for the defendants show that there is no dispute that this witness has personal knowledge about everything.

7. Defendant No. 2, brother of plaintiff, has given evidence which is in accordance with the pleadings

in the Written Statement. He has deposed that initially the entire area of aforesaid survey number was with joint Hindu family of the plaintiff, defendants and their father for cultivation on 'thoka' basis. He has deposed that subsequently the suit property was purchased under sale deed in the name of the plaintiff, but it was purchased by the joint Hindu family. The defendant has given evidence that after selling one ancestral land, the consideration was collected and from that amount the suit property was purchased by the joint Hindu family. The evidence of this witness shows that he has tried to say that since the year 1988 till the order of temporary injunction which was made in favour of the plaintiff, they were in joint possession. Thus, incorrectly he has admitted that after the year 1988, on the date of the Suit, they were not in possession. In the evidence, defendant No. 2 has produced some letters at Exh. 56 to 60 to show that they were leaving in joint family. On the basis of this record, submissions were made that the brothers were sending money to each other and they were also cultivating the land jointly. However, there is further admission that they started leaving separate since 1977.

8. In the cross examination, defendant No. 2 has stated that the ancestral land was sold for the consideration of ₹ 300/- to one witness examined by the defendants. No copy of the sale deed is produced. As the property was sold to the plaintiff under registered sale deed and there is no record to show that there was ancestral or joint family property with the plaintiff and the defendants at the relevant time, burden was heavy on the defendants to prove that there was nucleus yielding sufficient income or there was already some money with the family from which the suit property could have been purchased. There is no such documentary evidence. Shamrao Manjaji is examined to show that he has purchased 1 Acre 25 gunthas from the plaintiff for the consideration of ₹ 300/-. It is already observed that the said sale deed is not produced. Further, in the Written Statement, defendants had come with the case that the property was sold by their father and not by the plaintiff. In view of the nature of the defence taken by the defendants, it was necessary to establish that at or the relevant time the property was sold by the joint family and from the sale proceeds the suit property was purchased. Another witness Govind has given evidence

which is similar to the evidence of defendant No. 2.

9. Witness kisan examined by the defendants has given evidence that the plaintiff and the defendants were living separate since last 10 – 15 years. He has deposed that the property was purchased for joint Hindu family.

10. The revenue record shows that only the plaintiff is shown as owner of the suit property and his name is entered in the crop cultivation column also. Copy of the order made by the revenue authority is produced at Exh. 69 to show that the proceeding was started by the plaintiff against Sitabai. This proceeding was dropped and the observations are made by the revenue authority that the possession of the plaintiff was there and it was not disputed by Sitabai. The revenue record shows that initially the names of the plaintiff and also one defendant Ananda were entered in the revenue record that they were owners, but the entries were separate and they were not showing that they were members of joint Hindu family or any of them was 'karta'. Then the record of Gut number was created and revenue record of G.No. 18/1

shows that this property belongs to the plaintiff and he is in possession of the property. If the family was joint and the properties were purchased for joint Hindu family, both the properties would have been purchased in the name of the plaintiff, but that did not happen. The remaining property from the same land was purchased by the defendants and their names are entered separately in the revenue record.

11. Learned counsel for the appellants placed reliance on two cases reported as AIR 1961 Supreme Court – 1268 [Mallesappa Bandeppa Desai and another Vs. Desai Mallappa @ Mallesappa and another] and AIR 1983 Allahabad – 348 [Patram Singh (deceased by L.Rs.) Vs. Bahadur Singh].

12. The facts of the reported cases were different and there was the record in support of the cases of joint Hindu family. In the present case, father was alive and so it was not possible to infer that the plaintiff was 'karta'. Further, there is no evidence to prove the existence of nucleus or income of joint Hindu family. In view of the facts of the present case, this Court holds that the

observations made in the reported cases are of no help to the appellants/defendants. This Court holds that the District Court has not committed any error in giving the relief of permanent injunction. No substantial question of law as such is involved in the matter.

13. In the result, Second Appeal stands dismissed. In view of dismissal of the Second Appeal, C.A. No. 7057 of 2016 stands disposed of.

[T.V.NALAWADE, J.]