

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

SECOND APPEAL NO. 251 OF 2011

1. Shrikant Govind Sangvikar ... **Appellant**
Age 67 years, Occu: Bhikshuki (org. plaintiff)
R/o C/o Smt Usha Balkrishna
Pathak, 1026, Uttar Kasba,
Solapur

VERSUS

1. Rukhminibai w/o Manik
Sangvikar, (Died) through her
Legal heirs.

- 1-A) Sanjiv Vinayak Chiwate
Age 42 years, Occu: Business
R/o Soham Building, Krishna
Pool Naka, Karad, Dist.
Satara.

- 1-B) Sau Sanjana Govindrao
Kulkarni
Age 44 years, Occu: Household
R/o Salegaon Panji, Goa State
(deleted as per Exh.25)

- 2) Ashok Rangnath Magar ... **Respondents**
Age 52 years, Occu: Business (org.defendants)
R/o Mankawati Galli, Tuljapur
Tq.Tuljapur, Dist. Osmanabad.

Shri S. P. Brahme, Advocate for the appellants
Shri S. S. Choudhari, Advocate for respondent No.2.

WITH

SECOND APPEAL NO. 285 OF 2013

- Shrikant Govindrao Sangvikar ... **Appellant**
Age 65 years, Occu: (orig.
Bhikshuki, R/o 1026, North plaintiff)
Ksaba, Solapur

VERSUS

Ashok Rangnath Magar	...	Respondent
Age: Major, Occu: Trader		(Orig.
R/o Makanwanti Lane, Tuljapur		defendant)
Tq. Tuljapur, Dist. Osmanabad		

Mr. S. P. Brahme, Advocate for the appellant
Mr. S. S. Choudhari, Advocate for the respondent.

WITH
SECOND APPEAL NO. 790 OF 2013

1. Shrikant Govindrao Sangvikar
Age 64 years, Occu: Agri.
R/o 1026, North Kasba,
Solapur, Tq. & Dist. Solapur.
2. Sundrabai Shrikant Sangvikar
Age 61 years, Occu: Household
R/o As above.

VERSUS

1. Ashok Rangnath Magar
Age :50 years, Occu: Business
R/o Tuljapur, Dist. Osmanabad
2. Tanubai Manik Pawar
Age 70 years, Occu: Household
R/o Malumbra Tq. Tuljapur
Dist. Osmanabad.
3. Bharat Manik Magar
Age 48 years, Occu: Agri.
R/o As above.
4. Sudhakar Manik Pawar,
Age 42 years, Occu: Agri.
R/o As above.
5. Netaji Manik Pawar,
Age 46 years, Occu: Agri.
R/o As above.
6. Vyankat Manik Pawar

Age 44 years, Occu: Agri.
R/o As above.

7. Suman Jarasangh Wadne,
Age 44 years, Occu: Household
R/o At Post: Tuljapur
Tq. Tuljapur, Dist. Osmanabad
8. Sau. Mangal Mohan Navgire
Age 40 years, Occu: Household
R/o At post Tuljapur
Tq. Tuljapur, Dist. Osmanabad
9. Te Assistant Engineer,
Circle-1, Irrigation Project,
Sub Division, Tuljapur
Tq.Tuljapur, Dist. Osmanabad
10. The Executive Engineer, ... **Respondents**
Irrigation project, (orig.
Omerga, Tq. Omerga Defendants)
Dist. Osmanabad.

Mr. S. P. Brahme, Advocate for the appellants.
Mr. s. S. Choudhari, Advocate for respondent No.1
Mr. S. A. Wakure, Advocate for respondents 2 to 8.

WITH

WRIT PETITION NO. 4016 OF 2015

1. Bharat s/o Manik Pawar
Age 52 years, Occu: Agri.
R/o Malumbra Tq. Tuljapur
District: Osmanabad
2. Netaji s/o Manik Pawar
Age 42 years, Occu: Agri.
R/o Malumbra Tq. Tuljapur
District: Osmanabad
3. Vyankat s/o Manik Pawar ... **Petitioners**
Age 37 years, Occu: Agri. (Original
R/o Malumbra Tq. Tuljapur respondents
District: Osmanabad in MCA)

VERSUS

1. Shriknt s/o Govind Sangvikar
Age 72 years, Occu: Bhikshuki
R/o 1026, Uttar Ksaba,
Solapur, Tq. & Dist.Solapur
2. Sou. Sundarbai w/o Shrikant
Sangvikar
Age 72 years, Occu: Household
R/o 1026, Uttar Ksaba,
Solapur, Tq. & Dist.Solapur
3. Ramchandra @ Bandu s/o
Govindrao Sangvikar
Age 62 years, Occu: Bhikshuki
R/o 213, Jodbhavi Peth,
Solapur, Tq.& Dist. Solapur
4. Usha @ Prabhavati w/o
Balkrishna Pathak
Age 68 yeas, Occu: Household
R/o 1026, Uttar Ksaba,
Solapur, Tq. & Dist.Solapur
5. Sou. Anuradha @ Vatsala w/o
Balkrishna Pathak
Age 60 years, Occu: Household
R/o Atpadi, Tq. Atpadi,
District:Sangli
6. Sou. Surekha w/o Nandkishor
Pathak, Age 68 years,
Occu: Household,
R/o 213, Jodbhavi Peth,
Solapur, Tq.& Dist. Solapur
7. Sou. Surekha @ Sharda w/o
Prasad Pachlag,
Age 66 years, Occu: Household
R/o Gokul Nagar Road, Hubali
(Karntaka State).
8. Sou. Madhvi Narayan Godase
(Dead)Through legal
representatives

8-A Dhananjay s/o Narayan Godase
Age 40 years, Occu: Service,
R/o Bhigwan Road, Baramati.
Dist. Pune.

8-B Sou. Gita w/o Manohar Ghodake
Age 38 years, Occu: Household
R/o Bhekaraie Nagar, Hadapsar
Pune, Tq. & Dist. Pune

... **Respondents**
(Original
Appellants)

8-C) Sou. Priti w/o Prathmesh
Avsekar
Age 36 years, Occu: Household
R/o Bhekaraie Nagar, Hadapsar
Pune, Tq. & Dist. Pune.

(Petition is
dismissed as
against
Respondents 3, 6
and 8A as per
order
dt.16.10.2015.

Mr. Sanjay A. Wakure, Advocate for the petitioners
Respondent Nos. 1 and 3, 6, 8A-party in person

CORAM : T. V. NALAWADE, J

DATE : 7th April, 2016.

J U D G M E N T:

1. Second Appeal No. 251/2011 is already admitted.
The decision of this appeal will automatically decide
the other proceedings as the other proceedings have
arisen out of the dispute mentioned in Second Appeal
No.251/2011. In view of this circumstance, the other
two second appeals viz. Second Appeal No. 285/2013 &
790/2013 are admitted. Notice after admission made
returnable forth with and by consent, these appeals are
also heard alongwith Second Appeal No. 251/2011. For
the same reason, Rule in Writ Petition No.

4016/2015. Rule made returnable forth with and by consent, it is also taken up for final disposal.

2. Second Appeal No. 251 of 2011 is filed against the judgment and decree of Special Civil Suit No. 65 of 1996 which was pending in the court of Civil Judge, Senior Division, Osmanabad and also against judgment and decree of Regular Civil Appeal No. 242/2009 which was pending before the District Judge-4, Osmanabad. This suit was filed by the present appellant Shrikant for the relief of declaration that sale deed executed by Defendant No.1 Rukhminibai Sangvikar (Joshi) in favour of defendant No.2 in respect of the suit property is null and void. The relief of possession was also claimed of the said land by the plaintiff but both the reliefs are refused and the suit is dismissed.

3. Second Appeal No. 790/2013 is filed against the judgment and decree of Regular Civil Suit No. 232 of 2007 which was pending in the Court Civil Judge, Senior Division, Tuljapur District Osmanabad by the plaintiff of Special Civil Suit No. 65 of 1996. It is also against the judgment decree of Regular Civil Appeal No. 136/2009 which was pending in the District Court, Osmanabad. The appeal was filed by Ashok Magar, the

purchaser who is defendant No.2 in Special Civil Suit No. 65 of 1996. Regular Civil Suit No. 232 of 2007 was filed for direction against the Land Acquisition Officer and the Government to deposit the compensation amount in respect of acquisition of some portion of the suit land viz. Gat No. 623 in the Court. In this suit, it was contended that as Special Civil Suit No. 65 of 1996 was filed against Ashok Magar and it was not finally decided, the compensation amount received in respect of the suit land cannot be paid to Ashok Magar till the decision of Special Civil Suit No. 65 of 1996. The Trial Court has held that the plaintiff is not entitled to recover the amount already paid to Ashok Magar but direction was given by the Courts below to deposit the remaining amount of compensation viz. Rs.19,585/- in the Court for protecting interest of the parties.

4. Second Appeal No. 285/2013 is also filed by the appellant from Appeal No. 251/2011 and it is filed to challenge judgment and decree of Regular Civil Suit No. 121 of 2007 which was pending in the Court of Civil Judge, Junior Division, Osmanabad. It is also against the decision of Regular Civil Appeal No. 5 of 2009 decided by the District Court, Osmanabad. This

suit was filed by Shrikant, the plaintiff of in Special Civil Suit No. 65 of 1996 for relief of injunction to protect the possession till the decision of Special Civil Suit No. 65 of 1996. This suit is dismissed by the Courts below.

5. Writ Petition No. 4016/2015 is filed by one Bharat Manik Pawar who is purchaser from Ashok Magar of the suit property mentioned in Special Civil Suit No. 65 of 1996. This proceeding is filed to challenge the order dated 03.01.2015 made in Misc. Civil Appeal No. 150/2013 by the District Court, Osmanabad. This appeal was filed against the interim order made in Regular civil Suit No. 132/2007 against the decision of which Second Appeal No.790/2013 is filed. In that suit, Shrikant, plaintiff was allowed to withdraw the amount of compensation deposited in the court. This order was made in view of the decision given by this Court in Second Appeal No. 251 of 2011. These matters were decided on 13.02.2014 by this Court, other Hon'ble Judge and the decision was challenged by filing Special Leave Petition in the Supreme Court. The Hon'ble Apex Court has set aside the decision of this Court dated 13.02.2014 and the matters are remanded back to this Court. In view of the decision dated

13.02.2014, the trial court allowed Shrikant, plaintiff to withdraw the compensation amount.

6. Agricultural Land bearing Gat No. 623, the suit property, admeasures 10 Hectare 50 R and it is situated at village Sangvi, Taluka Tuljapur, District Osmanabad. Defendant No.1 Rukhminibai is the widow of paternal uncle of plaintiff Shrikant. Rukhminibai died during the pendnecy of the suit. She had one daughter by name Sushila and she was also dead and so two issues of Sushila like Sanjay and Sanjana were brought on record in the suit as per order made on Ex.1 and Exh.68. They did not file written statement. Ex-parte order was already made against Rukhminibai. In Regular Civil Appeal No. 242/2009, initially both the issues of Sushila were made respondents but subsequently, the present appellant withdrew the proceedings filed as against Sanjana, a daughter of Sushila. This circumstance is a relevant circumstance and needs to be kept in mind in view of the objection taken to the tenability of the proceedings.

7. It is the case of the plaintiff of Special Civil Suit No. 65 of 1996 that the suit property is ancestral and joint Hindu family property of plaintiff and

defendant No.1 Rukhminibai. It is contended that in the past, Regular Civil Suit No. 127/1970 was filed by Rukhminibai against present plaintiff and in that suit, compromise had taken place on 19.12.1973. It is contended that in the compromise, the suit land was allotted to the share of plaintiff Shrikant. It is contended that in view of the compromise, mutation was also made in favour of Shrikant and the other relatives of his branch and the name of Rukhminibai was deleted from the revenue record.

8. It is the case of plaintiff Shrikant that behind his back, defendant No.1 Rukhminibai got entered her name again in the revenue record as the owner. It is contended that Rukhminibai had become physically and mentally weak and sick. It is his case that she was absent minded and she had lost control over the mental faculty, she had virtually become insane. It is contended that in view of this condition of Rukhminibai, notice was published by him in newspaper to see that nobody makes any transaction with Rukhminibai. It is contended that inspite of this circumstance, defendant No.2 Ashok Magar purchased suit property from Rukhminibai under sale deed dated 26.07.1994 for consideration of Rs.1.5 lakh. It is

contended that plaintiff and Rukhminibai both were living in Solapur at the relevant time. It is contended that Rukhminibai virtually deceived the plaintiff and so criminal case was also required to be filed against her and defendant No.2. After making this contention, aforesaid reliefs were claimed in Spl. Civil Suit No. 65 of 1996.

9. Defendant No.2 purchaser filed written statement and contested the matter. In the written statement, he admitted that Gat No. 623 was ancestral and joint family property of plaintiff and Rukhminibai. He contended that Rukhminibai had equal share in the property and her share was 3 H 74 R. He contended that this share was purchased from Rukhminibai for lawful consideration. He denied that Rukhminibai was not mentally and physically fit to execute the sale deed. He contended that the aforesaid compromise decree was probably obtained by exercising undue influence and fraud on Rukhminibai. He contended that Sushilabai was daughter of Rukhminibai and she had also share in the suit property but she was not shown as party to compromise. He contended that the suit is bad for non-joinder of necessary party as the other persons who can challenge the transaction are not made party to

the suit. He also contended that after death of husband of Rukhminibai, the plaintiff probably created false record and he deceived Rukhminibai to grab her property. He contended that he is *bona fide* purchaser for value and without notice. He contended that he got the possession under the sale deed and so no relief can be granted to the plaintiff.

10. Issues were framed on the basis of aforesaid pleadings in Special Civil Suit No. 65 of 1996.

11. In view of the nature of dispute, it is desirable that the record is mentioned first. The 7/12 extract at Exh.111, which is from the year 1993-94, onwards shows that initially names of three persons were shown as owners and they had equal shares in 10 Hectares 50 R portion. One owner was Smt. Rukhminibai, other owner was Vyankatesh Joshi, brother-in-law of Rukhminibai and third owner was Manik Pawar.

12. In the year 1996, when the suit was filed, the plaintiff had not given boundaries of the disputed portion and he had claimed the relief in respect of entire area of Gat No. 623. On 20.09.2004, plaintiff Shrikant made amendment in the plaint and he described the suit portion by mentioning some portions of Gat

No. 623 on eastern and western sides. However, he did not mention specific area in respect of which the relief of possession was claimed. Thus, right from beginning the suit was defective due to defect in the discretion of property. From this circumstance, it can also be said that the plaintiff was not sure about the area owned by him or by Rukhminibai.

13. At Exh. 114, there is certified copy of Mutation No.166 dated 19.01.1966. It is in respect of survey No. 192. It is not disputed that survey No. 192 was changed and the present No. of the said land is Gat No. 623. This document shows that initially the entire property was standing in the name of Manik Datraray Joshi, Husband of Rukhminibai. After the death of Manik Joshi, application was made by Vyankatesh, brother of Manik Joshi and he requested to enter the names of three persons like Rukhminibai, Vyankatesh and Govind. Govind was also brother of Manik Joshi and present plaintiff is a son of Govind. It appears that name of the widow of Govind was entered as owner of equal share in place of Govind in Revenue Record.

14. No record of period prior to 1966 is produced to show that land had come to Manik Joshi from his father

and he was holding the property as Karta of Joint Hindu family, consisting of Manik Joshi and his two brothers viz. Govind and Vyankatesh. It needs to be kept in mind that Rukhminibai had no son and she had one daughter and she was living at the mercy of the two brothers of Manik Joshi. The steps were taken for mutation by two brothers of Manik Joshi.

15. There is certified copy of Mutation No. 1430 dated 16.10.1989. This document shows that Manik Pawar had applied for this mutation. It is already mentioned that Exh.111 shows the name of Manik Pawar as owner of 1/3 portion. He had applied for entering his name on the basis of sale deed dated 29.06.1982 executed in his favour by widow of Govind and also on the basis of decision of Regular Civil Suit No. 74/1976. The record shows that it was the case of Manik Pawar that he was in possession on *Batai* basis and so there was dispute. Subsequently, he purchased 1/3 portion from this Gat No. from widow of Govind. So name of Manik Pawar was entered for 1/3rd portion by this mutation. After making of this mutation, the name of mother of plaintiff Shrikant was deleted.

16. There is another 7/12 extract for the year 1976-

77 and it also shows that the names of Manik Pawar, Rukhminibai and Vyankatesh Joshi were entered for that year also for 1/3rd share each. The other revenue record shows that after death of Manik Pawar, names of his successors like Bharat Manik Pawar etc. were entered in the revenue record. The revenue record shows that in the possession column of 7/12 extract, names of Manik Pawar and Ashok Magar, defendant No. 2 of Special Civil Suit No. 65 of 1996 were shown. In the suit also, Shrikant claimed possession of entire area and so this circumstance also needs to be kept in mind.

17. The suit claim was based mainly on so called compromise decree of Regular Civil Suit No. 127/1970. The trial court did not consider the circumstance of compromise decree as certified copy of compromise decree and other relevant document was not produced. It appears that certified copy of compromise decree was produced in the appeal. This court has no hesitation to hold that such certified copy cannot change the fate of the matter in view of the other record available. In the cross examination, plaintiff Shrikant has admitted that 1/3rd share of the branch of Govind was sold by his mother to Manik Pawar. Copy of mutation made on the basis of sale deed is at Exh.116 and it is

already mentioned that by the mutation 1/3rd portion was shown to be sold by mother of Shrikant to Manik Pawar. In the sale deed, description of the property sold to Manik Pawar was given and on the western side of this portion, the portions belonging to Vyankatesh Joshi and Rukhminibai were shown. This circumstance shows that in the year 1972, as per the branch of Govind each sharer was in separate possession of respective 1/3 share and partition had already taken place amongst the three branches. There is such admission of the branch of Govind of partition in the sale deed and it cannot be ignored. The entire record of the suit filed in the year 1970 is not produced and further the entire revenue record and city survey record of other properties is not produced to show that all these properties had come to husband of Rukhminibai from his father.

18. The compromise decree was prepared on 19.12.1973 and application for mutation on the basis decree was made by mother of Shrikant on 24.04.1976. The application was made to make entry of the names of all the successors of Govind in respect of entire area of Gat No. 623. In the cross examination, Shrikant has admitted that no notice of this mutation proceeding

was given to Rukhminibai. He admits that mutation was made on the same day though it was sanctioned on 19.10.1976. This document is at Exh.113. At Exh. 115, there is certified copy of another mutation made on the basis of application given by Rukhminibai. This mutation shows that she had applied to the revenue authority to make correction in the revenue record and it was her case that mutation shown in Exh. 113 was wrongly made and it was made behind her back. The mutation at Exh. 115 shows that name of Rukhminibai was entered again as owner of 1/3rd portion and this mutation was sanctioned on 15.11.1991. No record at all is produced by Shrikant, plaintiff to show that mutation dated 15.11.1991 made in favour of Rukhminibai was challenged by him or any other person and the name of Rukhminibai was again deleted. It needs to be kept in mind that after this mutation, in the year 1994, Rukhminibai sold her share as per the revenue record to defendant No.2 Ashok Magar.

19. The substantive evidence of plaintiff Shrikant does not show that the compromise mentioned in compromise decree of Regular Civil Suit No. 127 of 1970 was really given effect and accordingly names of all the parties were entered in the record of all the

properties. The document mentions that many steps were to be taken even by Vyankatesh and some property was to be handed over to Rukhminibai. No record is produced to show that such property was really given to Rukhminibai as per the compromise. Further, the compromise document shows that the daughter of Rukhminibai was not party to the compromise. Even if the case of Shrikant that Rukhminibai's branch had only $1/3^{\text{rd}}$ share in the property is accepted as it is, it can be said that daughter of Rukhminibai had $1/6^{\text{th}}$ share and Rukhminibai had only $1/6^{\text{th}}$ share in the area of land Gat No. 623. Thus, virtually no evidence is given except the aforesaid mutation made in respect of Gat No. 623 by Shrikant to show that steps were taken on the basis of this compromise and other property was given to Rukhminibai. In any case, everything about mutation made against Rukhminibai and compromise decree is fishy. It is already observed that in the sale deed executed by mother of Shrikant, it was shown that the parties were enjoying there shares separately and so there was no need of filing suit for partition for Rukhminibai.

20. The record and facts and circumstances of the present matter show that more things could have been

brought to the notice of the Court if Rukhminibai was represented even in the present matter. Even the address of Rukhminibai was not complete in the Special Civil Suit No. 65/1996 but she is shown to be served. If Rukhminibai was properly defended, the record of all the properties could have been produced and more light could have been thrown on the conduct of brothers of Manik Joshi. Rukhminibai was widow of Manik Joshi and she was having no son and all the mutations were made by her brothers-in-law and record shows that they virtually tried to get everything by taking such steps. The steps taken by Rukhminibai for correction of revenue record and absence of challenge to the mutation made again in favour of Rukhminibai is sufficient to draw inference that the compromise decree shown to be made in the year 1973 was never acted upon.

21. The execution of sale deed by Rukhminibai in favour of defendant No.2 is admitted by Shrikant in the present matter. There was name of Rukhminibai as owner of 1/3rd portion in revenue record and in the past also her husband was shown as owner of the land.

22. The aforesaid record and pleadings show that defendant No. 2 could get possession from Rukhminibai.

All these circumstances are relevant. The courts below have dismissed the suit by holding that the suit is bad for non-joinder of necessary parties. It is already observed that the suit was filed for recovery of entire area. Further the suit was filed for declaration in respect of sale deed. This sale deed ought to have been challenged not only by Shrikant but by all the successors of Govind Joshi, Vyankatesh Joshi and also by the daughter of Rukhminibai. They were necessary parties to the suit and so, the suit was bad for non-joinder of necessary parties. In view of this circumstances, while admitting the appeal, this court had framed the following substantial question of law:

Whether the appellant can be non-suited for non-joinder of necessary party when he brings the suit in capacity of co-owner though he fails to prove his exclusive ownership ?

23. The learned counsel for the appellant argued on one more point and he submitted that substantial question of law needs to be formulated due to the findings given by the courts below that defendant No.2 was not bona-fide purchaser. He submitted that in view of this finding, the courts below ought to have

decreed the suit and so substantial question of law needs to be formulated on this point also.

24. The learned counsel for appellant placed reliance on seven reported cases as under:

- (1) AIR (Ori.)1958 (O) 101, Mohammad Asgar Vs. Narayan Mohapatra.
- (2) 1976 AIR (SC)2335, Ram Pasricha Vs. Jagannath.
- (3) 1991 (4) SCC 17, A. Vishwanatha Pillai Vs. Special Tahsildar.
- (4) 1993 (3) SCC 49, Laxmishankar Bhatt Vs. Yashram Vasta.
- (5) 2002 AIR (SC) 2572, Dhannalal Vs. Kalawatibai.
- (6) 2009 (10) SCC 223 FGP Ltd. Vs.Saleh Hooseini Doctor.
- (7) 2016 (3) SCC 296, Kasturi Vs. M. Chinniyan.

25. On the basis of observations made in these cases, the learned counsel submitted that the appellant of Second Appeal No. 251 of 2011, the plaintiff of Special Civil Suit No. 65 of 1996 could have represented all the co-owners of the suit property. The facts of these reported cases were different and relevant facts of present case are already quoted. These cases cannot help the appellant to show that the suit is tenable.

26. The learned counsel for the Respondent, original defendant no.2 placed reliance on two reported cases as under:

(1) AIR 1997 Punjab and Haryana 155, Chand Kaur Vs. Rajkur (died) and others

(2) AIR 19916 SUPREME COURT 196 (1), Bhoop Sing Vs. Ramsing.

In the first case, the High Court has discussed the conditions precedent for valid compromise in the suit. In the second case, the Apex Court has laid down that if compromise creates new rights, it needs to be compulsorily registered. This proposition could have been used against the present appellant in view of the circumstances already mentioned. In the compromises, virtually there is relinquishment of the rights, the transfer of rights.

27. The material already discussed and circumstance show that not only the other successors of Govind Joshi but the successors of Rukhminibai were also necessary parties. It is already observed that one of the successors of Rukhminibai came to be deleted in the first appeal by Shrikant. Vyankatesh was also necessary party, as under the compromise it is shown

that he got some property and if the compromise fails he also suffers. The discussion made also shows it could have been decided whether the compromise was given effect properly in the presence of the aforesaid necessary parties. The point of bindingness of compromise on the parties also could have been decided in the presence of necessary parties.

28. The aforesaid discussion shows that the plaintiff cannot say that he is absolute owner of the suit property much less entire area of Gat No. 623. He alone could not have challenged the sale deed made in favour of defendant No.2 by defendant No.1 in view of the circumstances already mentioned. Thus, the suit itself was not tenable. In view of this circumstance, the findings given by the courts below on other issues were unwarranted and so there is no need to discuss those findings. So the point formulated for hearing the present appeal as substantial question of law is decided against the appellant by presuming that the more parties than the parties mentioned insubstantial question of law were necessary party to the suit. There is no need of consideration of any other question as substantial question of law in the present matter. Thus, it is not possible to interfere with the decision

given by the courts below against the present appellant and Second Appeal No. 251 of 2011 needs to be dismissed. Due to this decision, the other appeals like Second Appeal Nos. 285/2013 and 790/2013 are also liable to be dismissed and so all the three second appeals stand dismissed.

29. Second Appeal No.790/2013 is dismissed and Writ Petition No. 4016/2015 was filed in respect of interim order made in Regular Civil Appeal No. 132 of 2007 against which the Second Appeal No. 790/2013 is filed. Thus writ petition needs to be allowed as it is a consequential order in view of dismissal of Second Appeal No. 251 of 2011. In the result, the writ petition is allowed and the interim order made in favour of Shrikant of allowing him to withdraw the amount is hereby set aside. The purchaser, Ashok Magar is entitled to get that amount.

30. Rule is made absolute in aforesaid terms.

31. Pending civil applications stand disposed of.

(T. V. NALAWADE, J.)

JPC