

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH
NAGPUR.**

SECOND APPEAL NO. 498 OF 2014

Pramod Suwalal Jain,
aged 50 yrs. Occu.Agriculture,
R/o Main Toad, Chondhi,
Tah. Patur, Distt. Akola.

APPELLANT.

VERSUS

1] Mankarna w/o Atmaram
Thakare.

2] Atmaram Bhagwan Thakare.

Both through L. Rs.

2[a] Santosh Atmaram Thakre,
aged 40 yrs. Occu. Teacher.

2[b] Anil Atmaram Thakre,
aged 35 yrs. Occu. Teacher.

2[c] Gajanan Atmaram Thakre,
aged 30 yrs. Occu. Agriculturist.

All R/o Chondhi, Tq. Patur,
Distt. Akola.

2[d] Ratnamala Shivram Pawar,
aged 39 yrs. Occu. Household,
R/o Ward No. 4, Saraswati Colony,
Malegaon, Distt. Washim.

2[e] Tara Madhukar Shinde,
38 yrs. Occ. Household work,
R/o Dirag-bori, Tq. Mehkar,
Distt. Buldhana.

RESPONDENTS.

Shri S. S. Dhengale, Advocate for the appellants.

Shri A. R. Deshpande, Advocate for the respondent nos.1 & 2 (L.Rs.).

CORAM: A. S. CHANDURKAR J.

Dated : APRIL 29, 2016.

ORDER:

By order dated 11.02.2015 the following substantial question of law was framed:

Whether in a suit for injunction simplicitor where the defendant seeks to rely upon the provisions of Section 36A of the Maharashtra Land Revenue Code, 1966 to invalidate the transfer, it is necessary that such defendant should have a validity certificate validating the tribe claim?

The appellant is the original plaintiff. It is the case of the appellant that on 10.06.2003 the defendant no.1-Mankarnabai had sold agricultural field bearing Survey No. 30/1B admeasuring 2 H 2 R of village Jamb to him. It is the further case that despite aforesaid the possession of the plaintiff was sought to be disturbed. On that basis the plaintiff filed Regular Civil Suit No. 34 of 2006 seeking permanent injunction so as to restrain the defendants from disturbing her possession.

The defendants filed their written statement at Ex. 11. The case of the plaintiff was denied. It was pleaded that the plaintiff was infact a money lender while the defendants belong to 'Andh' Scheduled Tribe. As they were tribals prior permission of the Collector for sale of the suit land was required to be first obtained. As the same was not done it was pleaded that the suit was liable to be dismissed.

The trial Court on a consideration of the evidence on record

decreed the suit and restrained the defendants from disturbing the possession of the plaintiff. However, appeal filed by the original defendants came to be allowed by holding that in view of provisions of Section 36A of the Maharashtra Land Revenue Code, 1966 (for short, the Code) the sale deed that was executed in favour of the plaintiff was not preceeded by any permission of the Collector and hence the plaintiff was not entitled to the relief of permanent injunction. Being aggrieved, the present second appeal has been filed.

Shri S. S. Dhengale, the learned counsel for the appellant submitted that the appellate Court was not justified in reversing the decree passed by the trial Court. He submitted that merely on the basis of the caste certificate at Ex. 48 it was held that the defendant no.1 belonged to the Scheduled Tribe and on that basis it was concluded by the appellate Court that the provisions of Section 36A of the Code were applicable. He submitted that the caste certificate at Ex. 48 was not duly verified. Relying upon the decisions in *Daulat Dhana Mali (deceased) by legal heirs Vs. State of Maharashtra and others* 1995(2) Bom. C. R. 279 and *Krushna Wasudeorao Ambekar & Ors. Vs. State of Maharashtra and others* 2010(2) ALL MR 698, it was urged that the caste certificate unless verified by the Scrutiny Committee could not have been relied upon. He, therefore, sought for restoration of the decree passed by the trial Court.

Shri A. R. Deshpande, the learned counsel for the legal representatives of the original defendants supported the impugned judgment.

According to him the question sought to be urged as the substantial question of law in fact stands answered in view of the fact that a validity certificate had been issued to the original defendant no.1 by the Scrutiny Committee on 23.03.2015. In that regard he relied upon the affidavit dated 28.04.2015. He further submitted that even the sons of the defendant nos. 1 and 2 had been granted validity certificates and the question sought to be raised with regard to absence of a validity certificate would no longer survive. According to him it is now clearly established that defendant no.1 belonged to 'Andh' Schedule Tribe and hence the sale deed executed on 21.06.2003 was without prior permission of the Collector. He also submitted that in proceedings initiated for restoration of the suit land under provisions of Section 36A of the Code, the Authorities had directed possession to be returned to the respondents.

As per the validity certificate dated 23.03.2015 it is clear that the defendant no.1 belong to 'Andh' Scheduled Tribe. She had been issued a validity certificate prior to her death. The Appellate Court relied upon the Caste Certificate at Ex. 48 to hold that in absence of any prior sanction for the sale deed as required under Section 36A of the Code, the possession of the plaintiff was not lawful. As the defendant no.1 possessed a validity certificate, this finding of the Appellate Court cannot be faulted. The decisions relied upon by the learned counsel for the appellant require the caste certificate to be verified before the same can be relied upon. This process has been completed in the present case. Hence, the substantial

question of law is answered by holding that as the defendant no.1 had a validity certificate issued in her favour, the appellate Court was justified in dismissing the suit. In view of aforesaid, there is no merit in the second appeal. The same is therefore dismissed with no order as to costs.

JUDGE

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