

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

SECOND APPEAL NO. 446 OF 2012

**WITH
CIVIL APPLICATION NO.7545 OF 2012
IN
SECOND APPEAL NO. 446 OF 2012
(Chandrabhagabai Kashinath Kedar and Others Vs.
State of Maharashtra and others)**

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Mr. Satyajit S. Bora, Advocate for the appellants
Ms. R.P. Gaur, A.G.P. for respondent No.1/State
Mr. Ajit Kadethankar, Advocate for respondent Nos.
2 to 7

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CORAM : SANGITRAO S. PATIL, J.

DATE : 17th JULY, 2017

ORAL ORDER :

The appellants have challenged the judgment and decree dated 30th December, 2003 passed by the learned Civil Judge, Senior Division, Ahmednagar in Regular Civil Suit No.296 of 1999 and that of dated 15th October, 2010 passed by the learned District Judge-1, Ahmednagar in

Regular Civil Appeal No.39 of 2004, which came to be dismissed.

2. Heard the learned counsel for the appellants and respondent Nos.3 to 7.

3. The appellants had challenged the decree passed in Regular Civil Suit No.343 of 1971 on the ground of fraud. They had further challenged the execution proceedings bearing Regular Darkhast No.68 of 1981 in which the judgment and decree passed in Regular Civil Suit No. 343 of 1971 was sought to be executed and ultimately satisfied. The Trial Court as well as First Appellate Court considered the evidence of the appellants in detail and negatived the case of the appellants. This concurrent finding of facts needs no interference in the Second Appeal.

4. The learned counsel for the appellants

submits that since the suit land is alluvial, it belongs to the Government. Consequently, the Trial Court as well as First Appellate Court ought to have considered the relief of mandatory injunction directing the Government to take back the said land from respondent Nos.2 to 7.

5. It is noted by the First Appellate Court that the suit land was included in Survey No.2 that was belonging to the predecessors-in-title of respondent Nos.2 to 7. Even otherwise when the alluvial land is of the Government, it is for the Government to take steps as to whether it should be allotted to any particular agriculturist for cultivation or otherwise. The appellants would not have any locus standi to seek direction against the Government to take back the said land from a particular agriculturist, to whom it was allotted by the Government. This relief has been rightly refused by the Trial Court and the First Appellate Court.

6. There is no substantial question of law involved in this appeal. The Second Appeal is dismissed. No costs.

7. In view of the dismissal of the Second Appeal, The Civil Application does not survive and stands disposed of.

[SANGITRAO S. PATIL]
JUDGE

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