

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

SECOND APPEAL NO.512 OF 2012

Bhimrao s/o. Baburao Bhore,
Age : 49 years, Occ. Agri.,
r/o. Jamb, Tq. Bhoom,
Dist. Osmanabad

..Appellant

Vs.

1. Mahadeo s/o. Baburao Muluk,
Age : 64 years, Occ. Agri.,
r/o. Jamb, Tq. Bhoom,
Dist. Osmanabad

2. Gautam s/o. Baburao Muluk,
Age : 59 years, Occ. Agri.,
r/o. As above

3. Ramesh s/o. Mahadeo Muluk,
Age : 42 years, Occ. Agri.,
r/o. As above

4. Nitin s/o. Baburao Bhore,
Age : 34 years, Occ. Agri.,
r/o. As above

..Respondents

AND

SECOND APPEAL NO.513 OF 2012

Arjun s/o. Baburao Bhore,
Age : 44 years, Occ. Agri.,
r/o. Jamb, Tq. Bhoom,
Dist. Osmanabad

..Appellant

Vs.

1. Mahadeo s/o. Baburao Muluk,
Age : 64 years, Occ. Agri.,
r/o. Jamb, Tq. Bhoom,
Dist. Osmanabad
2. Gautam s/o. Baburao Muluk,
Age : 59 years, Occ. Agri.,
r/o. As above
3. Ramesh s/o. Mahadeo Muluk,
Age : 42 years, Occ. Agri.,
r/o. As above
4. Nitin s/o. Baburao Bhore,
Age : 34 years, Occ. Agri.,
r/o. As above

..Respondents

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Mr.Amit Mukhedkar, Advocate for appellants in both appeals

Mr.S.R.Choukidar, Advocate for respondent no.3 in both appeals

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CORAM : SANGITRAO S. PATIL, J.

DATE : JULY 26, 2017

ORAL ORDER :

Both the appellants are original plaintiffs in R.C.S. Nos.237 of 1998 and 238 of 1998 respectively, seeking the relief of declaration of their title to the land block no.309 to the extent of 1 H each out of total area

of 12 H and 15 R of land situate at village Kamb, Tq.Bhoom, Dist. Osmanabad. According to them, they jointly purchased the land subject matter of the said suit from one Keshav Suryakant Joshi under a registered sale deed dated 03.06.1998 for a consideration of Rs.40,000/- each. They claim themselves to be in actual possession of the suit lands and sought the relief of injunction restraining the respondents from disturbing their possession thereon.

2. Considering the evidence on record and holding that the appellants are neither owners nor possessors of the above-mentioned land, the trial Court dismissed the suit.

3. The appellants filed Regular Civil Appeal Nos.45 of 2007 and 46 of 2007 respectively, before the District Court, Osmanabad and challenged the judgments and decrees passed by the trial Court against them. The learned Judge of the first

appellate Court dismissed those appeals solely on the ground that the predecessor-in-title of the appellants himself was not having title to the suit land subject matter of the suit and therefore, they were not entitled to claim the reliefs of declaration and injunction, as sought. The learned Judge of the first appellate Court confirmed the decrees passed by the trial Court.

4. The learned Counsel for the appellants submits that the finding recorded by the trial Court as well as the first appellate Court holding that the appellants are not owners of the suit lands are perverse. He submits that the said findings are based on the judgment dated 18.07.2001 delivered in R.C.A. No.347 of 1993 filed by Mahadu Baburao Mulak, Gautam Baburao Mulak and Ramesh Mahadeo Mulak against Keshav Joshi (predecessor-in -title of the appellants) and one Mahadeo Tulshiram Davre. He submits that Keshav Joshi was not present when the said appeal

was heard. He proposed to prefer Second Appeal against the judgment and decree dated 18.07.2001. There was some delay in filing the said appeal. Therefore, Keshav Joshi filed an application for condonation of delay. That application came to be rejected on 28.06.2002. Therefore, Keshav Joshi filed a Review Petition in the year 2002 itself and the same is pending. According to the learned Counsel, the judgment delivered by the District Court in R.C.A. No.347 of 1997 has not got finality in view of pendency of the Review Application. Consequently, the judgments delivered by the trial Court as well as the first appellate Court in the present matter based on the judgment of R.C.A. No.347 of 1993 are not sustainable. He submits that the learned Judge of the first appellate Court did not frame proper points for determination and dismissed the appeal without considering the evidence of the parties in detail. According to him the judgment of the first

appellate Court is cryptic and perverse. He, therefore, submits that the Second Appeals may be admitted.

5. As against this, the learned Counsel for respondent no.3 submits that Keshav Joshi was very much represented by an Advocate in R.C.A. No.347 of 1993. After considering the case of Keshav Joshi, the learned Additional District Judge, Osmanabad decided that appeal holding that Keshav Joshi is neither the owner nor the possessor of the land bearing block No.395/A (new block No.309) ad-measuring 5 H, 31 R., out of 12 H. 15 R. He submits that since the appellants are successors in title of Keshav Joshi in respect of the suit land and since Keshav Joshi himself has not been held to be owner of that land, the learned Judge of the first appellate Court discussed that point and negatived the case of the appellants. He submits that the issue of title of Keshav Joshi was considered and decided in R.C.A. No.347 of

1993. There was no point in repeating the same evidence for deciding the same questions in the appeals filed by the present appellants. He submits that mere pendency of an application for review of the order rejecting the application for condonation of delay in filing the appeal, cannot be said to be continuation of appeal. According to him, the judgment and decree in R.C.A. No.347 of 1993 has got finality.

6. Indisputably, the appellants are claiming title to the suit land through Keshav Joshi. However, the title of Keshav Joshi to the suit land has been considered in R.C.A. No.347 of 1993 and on the basis of the evidence on record, a specific finding came to be recorded that he is not the owner of the suit land. Since the appellants are claiming title to the suit land through Keshav Joshi and since the title of Keshav himself has been denied in the earlier litigation, the appellants cannot claim title to the suit

lands. When the appellants failed to establish their title to the suit lands, the other questions which were based on the finding in respect of issue of title, need no further discussion. In fact, the trial Court has considered in detail the evidence on record about the title of the appellants in respect of the suit land as well as their claim for possession thereon. The trial Court specifically held that the appellants are neither the owners nor possessors of the suit lands. This finding is well founded.

7. In the circumstances, even if the learned Judge of the first appellate Court did not frame all the points which were considered by the trial Court, when he considered the basic point that was involved in the matter, having effect of dismissal of the claim of the appellants, the judgment delivered by the learned Judge of the first appellate Court cannot be said to be perverse. Whatever minimum was required to be considered for

deciding the basic controversy between the parties, has been considered by the learned Judge of the first appellate Court. I do not find any infirmity in the finding recorded by the first appellate Court which upheld the judgment of the trial Court.

8. The contention of the learned Counsel for the appellants that pendency of review application against the order rejecting the application for condonation of delay, would amount to continuation of the suit, cannot be accepted. It is strange to note that the application for condonation of delay in filing the Second Appeal has been dismissed on 20.06.2002 and the review application against that order is stated to have been filed in the year 2002 itself. However, the appellants did not bother to take any steps to get the said review application circulated for hearing and disposal. The said review application seems to be a stale application, just filed for the sake of filing and

nothing more than that. Pendency of that review application cannot at all be considered as pendency of the Second Appeal. As such, the judgment and decree passed by the learned Additional District Judge in R.C.A. No.347 of 1993 on 18.07.2001 has got finality. On the basis of the finding recorded in that appeal, the learned Judge of the trial Court and that of the first appellate Court have negatived the case of the appellants and dismissed their appeals. I do not find any infirmity in the said judgment.

9. There is no substantial question of law involved in these appeals. Hence, the order :-

(i) Both Second Appeals are dismissed.

(ii) No costs.

[SANGITRAO S. PATIL, J.]