

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 46 OF 2012

1. Prashant s/o Shivaji Hake,
Age : 10 years (Minor), Occu. Nil,
U/g of his natural mother i.e.
appellant No. 2

2. Gangubai w/o Shivaji Hake,
Age : 31 years, Occu. Agriculture,
Both r/o Ajansonda (Bk),
Tq. Chakur, Dist. Latur

**APPELLANTS/
ORIG. PLAINTIFFS**

VERSUS

1. Venkati s/o Sheshrao Hake,
Since deceased through L.Rs.

1A. Anjanabai w/o Venkati Hake,
Age : 57 years, Occu. Agriculture,
R/o Ajansonda (Bk), Tq. Chakur,
Dist. Latur

1B. Shivaji s/o VEnkati Hake,
Age : 30 years, Occu. Agriculture,
R/o Ajansonda (Bk), Tq. Chakur,
Dist. Latur

1C. Panchfula w/o Pandurang Patil (Khatke)
Age : 25 years, Occu. Agriculture,
R/o Ajansonda (Bk), Tq. Chakur,
Dist. Latur

1D. Mainabai w/o Maroti Lavte,
Age : 20 years, Occu. Agriculture,
R/o Ajansonda (Bk), Tq. Chakur,
Dist. Latur

2. Vitthal s/o Ramchandra Hake,
Age : 58 years, Occu. Agriculture,
R/o Ajansonda (Bk) Tq. Chakur,
Dist. Latur

**RESPONDENTS/
ORIG. DEFENDANTS**

Mr. C.R. Deshpande, Advocate for the Appellants
Mr. S.V. Chandole, Advocate holding for Mr. V.G.
Sakolkar, Advocate for the respondents

CORAM : SANGITRAO S. PATIL, J.

DATE : 11th JULY, 2017

ORAL ORDER :

Heard the learned counsel for the appellants
and the learned counsel for the respondents.

2. The appellants instituted Regular Civil Suit No. 647 of 2002 for getting it declared that appellant No. 2 is the owner of the suit land and also for perpetual injunction, restraining respondent No. 1 from disturbing possession of the appellants over the suit land.

3. The suit land is block No. 645 (earlier survey No. 211), admeasuring 90 Ares, situate at village Ajansonda (Bk.), Taluka Chakur, District Latur.

4. The learned counsel for the appellants submits that this land was purchased by the appellants from respondent No.2, who is none other than the father-in-law of appellant No. 2 and the grandfather of appellant No.1, vide sale-deed dated 19th June, 2002.

He submits that the said land was succeeded by respondent No. 2 from his sister namely Radhabai. He then submits that respondent No. 2 sold out the another land bearing block No. 652 (earlier survey No. 139/2) in two parts i.e. as per the sale-deed dated 12th April, 1997 - two Acres and two gunthas and as per the sale-deed dated 27th February, 1979 - 12 gunthas, total 85 Ares. However, the boundaries of the lands - subject matter of the said sale-deeds, were the same which were mentioned in the sale-deed dated 19th June, 2002, that was executed in favour of the plaintiffs and as such, there erupted a dispute between the appellants and respondent No.1, leading to institution of the above numbered suit. He submits that there is mistake on the part of the Consolidation Officer in mentioning the correct block numbers in respect of the lands purchased by respondent No.1 as well as the appellants from respondent No.1.

5. The learned counsel for the respondents submits that there are concurrent findings of facts recorded by the Trial Court and the First Appellate Court, which are based on the evidence on record. There is no substantial question of law involved in this appeal.

6. Indisputably, respondent No.1 has purchased the land from respondent No. 2 in the years 1979 and 1997. The appellants purchased the land in the year 2002. While purchasing the land, it was necessary for the appellants to ensure that the boundaries and other description of the land proposed to be purchased by them from respondent No. 2 were correctly mentioned. Though the documents on record show that the appellants as well as respondent No. 1 were in possession of the lands which have been purchased by them, because of identical boundaries of the land - subject matter of their respective sale-deeds, the disputes have arisen between the appellants on one hand and respondent No. 1 on the other. It was necessary for the appellants to approach the Consolidation Officer for getting the consolidation record rectified. In the absence of rectification of consolidation record, the appellants cannot claim the reliefs sought by them on the basis of the boundaries mentioned in their sale-deed. The Trial Court and the Appellate Court have rightly considered the factual aspects of the matter and have rightly negatived the case of the appellants. These concurrent findings of facts cannot be disturbed in the Second

Appeal. Moreover, there is no substantial question of law involved in this appeal. Consequently, the Second Appeal is not maintainable. However, considering the peculiar facts of the case, the appellants would be at liberty to approach the Consolidation Officer and seek rectification of the consolidation record as permissible under the law. With these observations, I pass the following order:-

O R D E R

- (i) The Second Appeal is dismissed.
- (ii) No costs.
- (iii) In view of dismissal of the Second Appeal, Civil Application No. 692 of 2012 does not survive and stands disposed of.

[SANGITRAO S. PATIL]
JUDGE

npj/sa46-2012