

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.758 OF 2015
WITH
SECOND APPEAL NO.101 OF 2016

- 1 Shri. Garibrao Matu Thombre
Age : 48 years, Occ.: Agriculture
- 2 Shri. Sahebrao Matu Thombre
Age : 44 years, Occ.: Agriculture
- 3 Smt. Laxmibai Matu Thombre
Age : 78 years, Occ.: Agriculture
- 4 Smt. Ganbubai Ramchandra Kajikar
Age : 68 years, Occ.: Agriculture

All residing At & Post Astaga,
Taluka Nandgaon, District Nashik

- 5 Smt. Jijabai Rajaram Masul,
Age : 43 years, Occ.: Agriculture
Residing At & Post Shingve,
Taluka Chandwad, Dist. Nashik

.... Appellants
(Original Defendants)

Vs.

- 1 Shri. Sambha Kachru Chandan
Age : 59 years, Occ.: Agriculturist

- 2 Shri. Nimba Kachru Chandan
Age : 53 years, Occ.: Agriculturist

Both residing at Village Nesankhede (Bk),
Taluka Chandwad, Dist. Nashik

- 3 Smt. Mandabai Paru Thombre
Age : 48 years, Occ.: Agriculture
Residing at Nesankhede (Bk),
Taluka Chandwad, Dist. Nashik

- 4 Smt. Manjubai Nivrutti Lavate
Age : 63 years, Occ.: Agriculture
Residing At & Post Dhamori,
Taluka Kopargaon, Dist. Ahmednagar

- 5 Smt. Sajaai Sukdeo Masul
Age : 53 years, Occ.: Agriculture
Residing At & Post Nemsheewadi
Thakurwadi, Taluka Malegaon,
Dist. Nashik

.... Respondents
(Nos. 1 and 2 original
Plaintiffs and Nos. 3 to 5
original Defendants)

Mr. P.N. Joshi for the Appellant in both Appeals.

Mr. Ketan Joshi a/w Mr. Sandip Shinde for Respondent Nos. 1 and 2 in
both Appeals.

Coram : N.M. Jamdar, J.

Date : 26 April 2017

ORAL JUDGMENT :

These two second appeals arise from the common order passed by the District Judge, Niphad on 15 November 2014.

2 Second Appeal No.758 of 2015 arises from the order passed in Regular Civil Appeal No. 336 of 2005 which in turn arises from the judgment and decision of the learned Civil Judge, Junior Division, Chandwad in Regular Civil Suit No. 122 of 1998.

3 Second Appeal No. 101 of 2016 arises from the judgment and order passed by the learned District Judge in the Regular Civil Appeal No. 335 of 2005, which arose from Regular Civil Suit No. 100 of 1997 passed by the learned Civil Judge, Chandwad.

4 Regular Civil Suit No. 100 of 1997 was filed by the present Appellants, which was partly decreed by the learned Civil Judge, Junior Division, Chandwad and the Respondents were restrained by the order of injunction. The Regular Civil Suit No.122 of 1998 was filed by the Respondents herein, which was dismissed by the learned Civil Judge by the judgment and order dated 16 August 2005.

5 In the appeals filed by the Respondents in the District Court, the impugned orders have been passed.

6 Heard the learned counsel for the parties.

7 After hearing the learned counsel for the parties, both the appeals are admitted on the following question of law.

“Whether the District Judge has considered the effect of the Maharashtra Amendment 21 of 2002 to Section 5 of Maharashtra Inferior Village Watans Abolition Act, 2000.

By consent of parties, the Appeals are taken up for disposal forthwith. Paper-book is dispensed with.

8 The learned District Judge in the impugned judgment and order has rendered a finding that the sale-deed Exhibit 74, which is the basis of the claim of the Appellants, was bad in law and void and therefore title was not transferred to the Appellant. The learned District Judge has held that since the title was not transferred, the Appellants could not claim any right in the suit property. The learned District Judge has held that the suit property was Inam Class VI (B), Mahar Jaglya Vatan, which was re-granted and it was non-transferable without permission of the Collector in view of Section 5 of the Bombay Inferior Village Watans Abolition Act, 1958.

9 The learned counsel for the Appellants has placed on record the text of the Maharashtra Amendment No. 21 of 2002,

wherein Sub-Section 3 of Section 5 of the Act has been substituted.

The amended provision reads thus :

“5 Regrant of Watan land to holders of Watan...

(1).....

(2).....

[1(3) (a) On or after the commencement of the Bombay Paragana and Kulkarni Watans (Abolition), the Bombay Service Inams (Useful to Community) Abolition, the Bombay Merged "Territories Miscellaneous Alienations Abolition, the Bombay Inferior Village Watans Abolition and the Maharashtra Revenue Patels (Abolition of Office) (Amendment) Act, 2000 (hereinafter, in this section, referred to as "the commencement date"), the occupancy of the land regranted under sub-section (1) may be transferred by the occupant for agricultural purpose, and no previous sanction or no objection certificate from the collector or any other authority shall be necessary for such transfer. After such transfer, the land shall be continued to be held by such transferee occupant on new and impartible tenure (Occupant Class II), in accordance with the provisions of the Code:

(b) Before the commencement date, if any such occupancy has already, without previous sanction or no objection certificate from the Collector or any other authority, been transferred by the occupant, for agricultural purpose, such transfer may be regularized on the production of registered instruments such as sale deed, gift deed,

etc., as a proof thereof, for such transfer. After such regularisation, the occupancy of such land shall be held by such transferee occupant on new and impartiable tenure (Occupant Class II), in accordance with the provisions of the Code:].

Provided that, any such occupancy held on new and impartiable tenure (Occupant Class II) may, after the commencement date, be converted into old tenure (Occupant Class I) by the occupant by making payment of fifty per cent, of the amount of the current market value of such land to the Government, and after such conversion, such land shall be held by the occupant as Occupant Class I, in accordance with the provisions of the Code:

Provided further that, if on the commencement date, any such occupancy has already, with the prior permission of the Collector or any other competent authority on payment of the appropriate amount as Nazarana, been transferred for non-agricultural use, such transfer of occupancy shall be deemed to have been made under the first proviso and the land shall be deemed to be held by the occupant as an Occupant Class 1, in accordance with the provisions of the Code, with effect from the date of such transfer:

Provided also that, if on the commencement date, any such occupancy has already, without prior permission of the Collector or any other competent authority and without payment of the

amount equal to fifty per cent, of the current market value of such land, as Nazarana, been transferred for non-agricultural use, such transfer may be regularised on payment of an amount equal to fifty per cent, of the current market value of such land for non-agricultural use as Nazarana, and an amount equal to fifty per cent, of such Nazarana as a fine, and on such payment, the occupant shall hold the land as an Occupant Class I, in accordance with the provisions of the Code.

Perusal of the amended Section 5 indicates that a party can apply to the Collector for regularisation of the transfer, even though before the transfer, the permission was not taken. A detailed methodology has been laid down for such regularisation.

10 The learned counsel for the Appellant states that text of the substituted provision has not been brought to the notice of the learned District Judge. The learned counsel for the Respondents is not able to demonstrate otherwise. Therefore, the reliance of the learned District Judge on the provisions of the Act of 1958 was without noticing the substituted Section 5(3) of the Act.

11 The question of law is answered accordingly. The judgment and orders passed by the learned District Judge will have to be set aside and the appeals before the learned District Judge will have to be restored to be decided in view of the above referred Amendment of 2002.

12 Accordingly, both the Second Appeals are allowed. No order as to costs. The judgment and order passed by the learned District Judge dated 15 November 2014 in Regular Civil Appeal No. 336 of 2005 and Regular Civil Appeal No. 335 of 2005 is quashed and set aside. Regular Civil Appeal Nos. 335 of 2005 and 336 of 2005 stand restored to the file of the learned District Judge, Niphad.

13 Both the Appeals will be disposed of on their own merits. All contentions of the parties are kept open. It is clarified that the the implication of this Amendment of 2002 on the facts of the present case, is kept open to be considered on it's own merits by the learned District Judge.

14 The parties will appear before the learned District Judge on 7 June 2017. Since remand has been necessitated in the above circumstances, it is open to the parties to make a request to the learned District Judge for early disposal of the appeals.

(N.M. Jamdar, J)