IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

SECOND APPEAL NO.724/2011

Sangram s/o Kashinath Swami,
deceased, through his L.Rs. -

1] Sundarbai wd/o Sangram Swami,
age 57 yrs., occu.household,

2] Prabhakar s/o Sangram Swami,
age 37 yrs., occu.agri.,

3] Baswaraj s/o Sangram Swami,
age 28 yrs., occu.agri.,

4] Shridevi d/o Sangram Swami,
age 24 yrs., occu.household,

All r/o Nalegaon Tq.Chakur Dist.Latur.
...Appellants..
(Org.deft.nos.1 to 3)

VERSUS

1] Mahadev s/o Gurunath Swami,
age 38 yrs., occu.agri.,

2] Shivkumar s/o Gurunath Swami,
age 32 yrs., occu.agri.,

3] Shantabai wd/o Gurunath Swami,
age 58 yrs., occu.household,

4] Balika d/o Gurunath Swami,
since deceased, through her L.Rs. -

4A] Mahadev Malikarjun Swami,
age 35 yrs., occu.agri.,
r/o Nalegaon Tq.Chakur Dist.Latur.

4B] Shubham s/o Mahadev Swami,
age 14 yrs., occu.student, r/o as above.

4C] Sneha d/o Mahadev Swami,
age 11 yrs., occu.student, r/o as above.

Respondent nos.4B and 4C being minors,
u/g of their father – res.no.4A.

5] Vishwanath s/o Shankar Swami,
since deceased, through his L.Rs. -

5A] Smt.Laxmibai Vishwanath Swami,
age 70 yrs., occu.household,

5B] Ramesh s/o Vishwanath swami,
age 50 yrs., occu.agri.,

All r/o Nalegaon Tq.Chakur Dist.Latur.
...Respondents..
(Org.plaintiffs & deft.no.4)

,,,,,

Shri Dhananjay P. Deshpande, Advocate for appellants.
Shri Chaitanya Deshpande, Advocate h/f Shri C.R. Deshpande, Advocate for respondent nos.1 to 3.
Respondent nos.4A to 4C, 5A and 5B absent, though served.

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CORAM: V.L. ACHLIYA, J.

DATE: 15.10.2018

PER COURT :

1] This second appeal is directed against the judgment and decree dated 22.9.2009 passed in Regular

Civil Suit No.80/2002 by learned Civil Judge, Junior Division, Chakur Dist.Latur, and confirmed in appeal vide judgment and order dated 12.10.2001 passed by learned District Judge-3, Latur, in Regular Civil Appeal No.182/2009.

2] Heard learned counsel for the appellants – original defendants and respondent nos.1 to 3 – original plaintiffs. Respondent nos.4A to 4C, 5A and 5B are absent, though served.

3] Before dealing with the submissions advanced, it is useful to refer few facts leading to filing of the present appeal.

[a] The respondents herein had filed Civil Suit bearing Regular Civil Suit No.80/2002 (old Regular Civil Suit No.443/1996) claiming therein that the respondents are the owners of land bearing Survey No.11B (Gut No.105) admeasuring 29 Aares situated at village Nalegaon Tahsil Chakur (hereinafter referred to as the said land). On 19.6.1996, they were dispossessed by the appellants – defendants on the basis of judgment and decree dated 29.10.1996 passed in Regular Civil Suit No.143/1982 obtained against the predecessor in title of plaintiffs.

The plaintiffs have approached with a case that the judgment and decree dated 29.10.1996 passed in Regular Civil Suit No.143/1982 was obtained by practising fraud upon the Court. The plaintiffs have laid the foundation of suit with specific contention that their predecessors in title Gurunath Swami – the defendant no.2 in Regular Civil Suit No.143/1982 died on 15.2.1982. However, the written statement in RCS No.143/1982 was shown to be filed by Gurunath Swami on 3.9.1982, wherein the entire suit claim was shown to be admitted by the defendants. By filing such written statement with the forged signature of Gurunath Swami, the suit got decreed in favour of appellants. The order dated 29.10.1996 passed in said suit by the learned Civil Judge, Junior Division, Ahmedpur, reflects that the decree on admission was passed on the basis of said written statement. Thus, according to case set up by plaintiff, the decree in Regular Civil Suit No.143/1982 was obtained by appellants by practising fraud upon the Court. The respondents – plaintiffs filed RCS No.80/2002 seeking declaration to the effect that the judgment and decree passed in Regular Civil Suit No.143/1982 was obtained by practising fraud

upon Court and passed against a dead person which acts as nullity as against the respondents – plaintiffs and claimed the decree of possession of suit land.

[b] The appellants – original defendants resisted the suit claim. They have denied the case of the plaintiffs and asserted that at the time of passing judgment and decree in Regular Civil Suit No.143/1982, the predecessor in title of the respondents – plaintiffs namely Gurunath Swami was alive. The defendants have further claimed that they never dispossessed the plaintiffs and throughout they were in possession of suit land.

[c] In order to prove their case, plaintiffs have examined three witnesses which includes PW1 Madhav – one of the plaintiffs, PW 2 Bhanudas Jamadar – Gram Sevak of village panchayat to prove the death certificate (Exhibit 56) issued by village panchayat in respect of deceased Gurunath swami. Plaintiffs have examined one more witness on the point of dispossession. On behalf of the appellants – defendants, Prabhakar Sangram Swami – one of the defendants, stepped into the witness box and deposed as per the case of the defendants.

[d] In order to substantiate and prove the case of the plaintiffs, the plaintiffs have got proved the death certificate - Exhibit 56 issued by village panchayat, Nalegaon, through Bhanudas Jamadar (PW2). The death certificate (Exhibit 57) was admitted in evidence on the basis of admission recorded by the Advocate for defendants. On close analysis of the evidence, the trial Court decreed the suit in favour of the plaintiffs. Being aggrieved, the appellants — defendants preferred appeal before the District Court at Latur. By judgment and order dated 12.10.2011, the appellate Court dismissed the appeal and confirmed the decision of trial Court. Being aggrieved, the appellants have preferred this second appeal.

4] Shri Dhananjay Deshpande, learned counsel for the appellants, assailed the reasons and findings recorded by the Courts below with contention that the Courts below have failed to appreciate the evidence adduced in its proper perspective and also failed to apply the correct principle of law while analyzing the evidence and recording findings in favour of the plaintiffs. By referring the evidence adduced in the

case and more particularly the death certificate produced at Exhibit 57, which was admitted in evidence on the basis of admission recorded by learned Advocate representing the defendants - appellants, the learned counsel submits that the Courts below erred in taking into consideration that the admission given by the learned Advocate though it was contrary to the case of the defendants. It is submitted that the Courts below should not have acted upon such admission. It is contended that in view of specific case of the defendants that the deceased Gurunath Swami was alive at the time of filing of suit as well as passing of decree, the Courts should have insisted for proof of the death certificate – Exhibit 57, irrespective of admission given by their Advocate. It is submitted that the admission given by the Advocate representing the defendants cannot be treated as an admission given by the defendants so as to bind the defendants. In support of this submission, the learned counsel has referred and relied upon the decision of this Court in *Swami Krishnanand Govindanand v. M.D. Oswal Hosiery (Regd.)* reported in [**(2002) 3 SCC 39**].

5] The learned counsel for the appellants further

submits that the evidence as adduced by the respondents – plaintiffs to prove that the deceased Gurunath Swami died on 15.2.1982 inspires no confidence. It is submitted that though the death certificates - Exhibits 56 and 57 claimed to be issued by the same village panchayat on the basis of information, still those certificates (Exhibits 56 and 57) reveal two different dates recorded in respect of death of deceased Gurunath Swami. In the certificate - Exhibit 56, the date of death of Gurunath Swami is shown as 15.2.1982. Whereas in the death certificate at Exhibit 57, the date of death of deceased Gurunath swami is shown as 21.2.1982. In the light of discrepancy as to exact date of death of deceased, the Courts below should not have relied upon the evidence adduced by plaintiffs.

6] The learned counsel submits that the appeal filed by the appellants raises number of substantial questions of law and urged to admit the appeal.

7] On the other hand, the learned counsel representing the respondent nos.1 to 3 supported the judgment and decree passed by the Courts below. It is submitted that the appeal filed by the appellants raises

no substantial question of law. By referring the reasons and findings recorded by the Courts below, the learned counsel submits that the decisions rendered by the Courts below are quite consistent with the pleadings and evidence adduced in the case. It is submitted that the reasons and findings recorded by the Courts below are in consonance with the evidence adduced in the case and there is absolutely no perversity in any of the findings recorded by the Courts below to call for interference in exercise of powers u/s 100 of the Code of Civil Procedure. By referring the evidence on record, the learned counsel submits that the Courts below have rightly held that the deceased Gurunath Swami – the predecessor in title of plaintiff, died much prior to filing of Regular Civil Suit No.143/1982 and the decree in said suit was obtained by practising fraud upon Court and operates as nullity being against the dead person.

8] I have carefully considered the submissions advanced in the light of reasons and findings recorded by the Courts below. In my view, the concurrent decisions rendered by the Courts below call for no interference in exercise of jurisdiction of this Court in second appeal

u/s 100 of the Code of Civil Procedure. The reasons and findings recorded by Courts below are based upon due consideration of pleadings and evidence adduced in the case. None of the reasons and findings recorded by the Courts below can be termed as perverse so as to call for interference in exercise of appellate jurisdiction of this Court

9] As discussed, the respondents – plaintiffs have approached with a specific case that on the date of filing of Regular Civil Suit No.143/1982, the deceased Gurunath Swami was not alive. He died on 15.2.1982. In order to prove their case, the plaintiffs have examined Madhav Gurunath Swami – one of the plaintiffs, who deposed as per case of the plaintiffs. He has deposed that his father deceased Gurunath Swami died on 15.2.1982. He has categorically deposed that Regular Civil Suit No.143/1982 was filed on 28.4.1982. His father Gurunath Swami died much before institution of Regular Civil Suit No.143/1982. So also no suit summons were served upon the defendants in said suit and the decree was obtained by practising fraud upon the Court. In support of the oral testimony of PW1 Madhav Gurunath

Swami, the plaintiffs have produced the death certificate (Exhibit 56) issued by the village panchayat, Nalegaon, which came to be proved through the plaintiffs' witness no.2 Bhanudas Jamadar – the then Gram Sevak of village, Nalegaon, who deposed on the basis of death register maintained by village panchayat and proved the contents of death certificate.

10] If we consider the evidence adduced by the appellants – defendants, then except the fact deposed by witness to defendants that the deceased Gurunath Swami was alive on the alleged date of filing of RCS No.143/1982 as well as passing of decree in said suit, no other evidence was adduced on the part of defendants to disprove the case of the plaintiffs. So far as the discrepancy which appears in respect of death certificates produced at Exhibits 56 and 57, the certificate (Exhibit 57) is a xerox copy, which has been admitted in evidence on the basis of admission recorded by Advocate representing the defendants. In death certificates - Exhibits 56 and 57, in fact there is no discrepancy except the date of death of the deceased Gurunath Swami mentioned in these certificates. In death

certificate - Exhibit 56, the date of death of Gurunath Swami mentioned as 15.2.1982, whereas in death certificate - Exhibit 57, the date of death of Gurunath Swami is shown as 25.2.1982. Except this information, all other details mentioned therein tally with each other. The certificate – Exhibit 56 produced by plaintiff has been duly proved through PW2. The certificate – Exhibit 57 is a xerox copy. Only for the reason that the discrepancy appears as regards the date of death of deceased Gurunath Swami in view of certificates – Exhibits 56 and 57, the evidence adduced by the plaintiffs cannot be discarded. The plaintiffs have examined Bhanudas Jamadar (PW2) – Gram Sevak of village to prove the certificate - Exhibit 56. He has deposed on the basis of record maintained by village panchayat. At the time of recording of evidence, the witness had brought the original register on the basis of which the contents of certificate - Exhibit 56 have been proved by the plaintiffs. Nothing is brought through the cross-examination of PW2 to accept the case of defendants that the death certificates - Exhibits 56 and 57 are bogus documents created by plaintiff for the purpose of filing

suit.

11] The decision in the case of *Swami Krishnanand Govindanand v. M.D. Oswal Hosiery (Regd.)* (supra) referred and relied upon by the learned counsel for the appellants has no bearing upon the facts of the present case. In the case in hand, there is specific admission recorded in the handwriting and the signature of Advocate representing the defendants. On the basis of admission given in writing, the death certificate - Exhibit 57 has been admitted in evidence. The fact recorded in death certificate – Exhibit 57 also proves that the deceased Gurunath Swami – the defendant no.2 in RCS No.143/1982 was not alive at the time of filing of suit as well as passing of decree in said suit.

11] Thus, considering the overall facts of the case and the evidence on record, I am of the view that no case is made out to admit the appeal filed by appellants as against the concurrent decisions rendered by Courts below. The appeal filed by appellants raises no substantial questions of law to be considered and decided in second appeal.

12] In the result, the appeal deserves to be

dismissed Accordingly, the appeal is dismissed. No order as to costs.

13] In view of dismissal of appeal, Civil Application No.15285/2011 stands disposed of in terms of decision in the appeal.

(V.L. ACHLIYA, J.)