

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 468 OF 2017

1. Bhairu s/o Ambadasrao Shrikhande,
Age 85 years, Occupation Agriculture,
R/o Sanja Tq. Dist. Osmanabad.
2. Shrimant s/o Vithoba Sathe,
Age 94 years, occupation Agriculture,
R/o as above.

Through Power of Attorney Holder of
Appellant Nos.1 and 2 Sanjay s/o Bhairu
Shrikhande, Age 38 years, Occupation
Agriculture, R/o Sanja Tq. Dist.
Osmanabad.

...Appellants.
(Orig.Plffs.)

VERSUS

1. Bhagwan s/o Devidas Londhe,
Died Through L.Rs.
- 1A. Prakash s/o Bhagwan Londhe,
Age 49 years, Occupation Agriculture,
R/o Upla (M) Tq. Dist. Osmanabad.
- 1B. Satish s/o Bhagwan Londhe,
Age 49 years, Occupation Agriculture,
R/o As above.
- 1C. Vijaya w/o Bhagwat Kambale,
Age 54 years, occupation Household,
R/o As above.
- 1D. Shalan w/o Suresh Gaikwad,
Age 52 years, occupation Household,
R/o As above.
- 1E. Chhaya w/o Digambar Dolare,
Age 48 years, Occupation Household,
R/o As above.

- 1F. Ranjana w/o Nrayan Gaikwad,
Age 43 years, Occupation Household,
R/o As above.
- 1G. Malan w/o Dhanraj Sagar,
Age 41 years, occupation Household,
R/o As above.
2. Uttam s/o Bhagwan Londhe,
Age 55 years, occupation Service,
District Central Cooperative Bank
Ltd., Ram Nagar, Osmanabad
R/o As above. ...Respondents.
(Orig.Defts.)

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Mr. N. B. Jadhav, Advocate for appellants.
Mr. S. G. Chapalgaonkar, Advocate for Respondents
No.1A and 1B.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 11-06-2019.

ORDER :

1. Present appeal has been filed by the original plaintiffs challenging the concurrent Judgment and decree passed in Regular Civil Appeal No.11 of 2015 by learned District Judge – 2, Osmanabad, dated 16-12-2016, whereby the Judgment and decreed passed by learned 4th Jt. Civil Judge, Senior Division, Osmanabad, in Regular Civil Suit No.231 of 2000, dated 08-01-2015, was confirmed.

2. Present appellants – original plaintiffs had filed suit for declaration of ownership and perpetual injunction. They were claiming to be the owner of land bearing Survey No.141/2002 (Block No.931) admeasuring 5 Acres situated at village Upla (M) Tq. Dist.

Osmanabad. The said land was originally owned by defendant No.1. It was stated that, defendant No.1 had sold the said land to one Manoj Patil and then Manoj Patil had sold the said land to plaintiff on 04-04-1984 by registered sale deed. The revenue record was mutated in the name of plaintiffs. Defendant No.1 was serving in Revenue Department, but thereafter he started obstructing the possession of plaintiffs, and therefore, they filed suit for declaration and injunction.

3. Original defendant No.1 resisted the suit by filing written statement stating that, State Government had allotted the suit land to defendant No.1 in the year 1982. When he was in need of amount of Rs.5,000/-, he had requested then Circle Officer Shri Waman Kulkarni to extend the said amount. Accordingly said amount was extended by Shri Waman Kulkarni to him but then he asked to defendant No.1 to execute sale deed as security in the name of Manoj Patil. It is stated that, in spite of the execution of the said sale deed, he was possessing the said land. According to him, he had repaid the said land to Waman Kulkarni and then he requested Waman Kulkarni as well as Manoj Patil to reconvey the said land to him but then they failed to do so. Defendant No.1 came to know about the mutation entries in the name of plaintiffs, and therefore, he challenged those entries before Revenue Court and the dispute is still pending. It is also stated that, the said sale deed

cannot convey any right, title or interest to Manoj Patil as the same was executed contrary to the provisions of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act. No prior permission of Collector, Osmanabad, who is the competent authority, was taken.

4. After the issues were framed, both the parties had led oral as well as documentary evidence. After perusal of the evidence, the learned Trial Court dismissed the suit and as aforesaid the learned First Appellate Court has confirmed the said Judgment and decree, hence this second appeal.

5. Heard Mr. N. B. Jadhav, advocate for the appellant and Mr. S. G. Chapalgaonkar, Advocate for respondents No.1A and 1B.

6. It has been vehemently submitted on behalf of the appellants that, both the Courts below have not considered the evidence as well as law point involved in the matter. In fact by virtue of his own act, the defendant No.1 had sold the said land to Manoj Patil. He cannot challenge that document. Further plaintiffs have purchased the suit property from said Manoj Patil. Plaintiffs had examined Manoj Patil who had categorically reiterated about the sale transaction between him and the plaintiffs. There is also a specific recital that, defendant No.1 had handed over the possession of the suit property to Manoj Patil while executing sale deed in his favour and then Manoj Patil had handed over the said land to plaintiff when he executed sale deed in

favour of plaintiffs. Both the Courts have therefore erred in giving finding in respect of issue of possession in negative. The revenue record stood in the name of plaintiffs, and therefore, that ought to have been considered by both the Courts. Further unless and until the registered sale deed is got cancelled or declared invalid under law, the plaintiff will have to be considered as the owner and possessor of the property on the basis of the sale deed executed in his favour. It is also stated that, they have approached Collector, Osmanabad for regularization of the transaction and that application is still pending for adjudication. Therefore, substantial questions of law are arising in this matter.

7. The learned advocate appearing for the respondents supported the reasons given by both the Courts below.

8. It will not be out of place to mention here that, the plaintiffs who are challenging the concurrent findings of both the Courts below should show that there is substantial questions of law arising in this case as contemplated under Section 100 of Code of Civil Procedure for taking cognizance of the second appeal. Both the Courts below in this case have concurrently held that, defendant No.1 is in possession of the suit property. Though the recital in the sale deeds is that, earlier Shri Manoj Patil was possessing the suit land and then present plaintiffs are possessing it. It is also not in dispute that, in

the 7/12 extract name of the plaintiffs is mentioned, however it can be seen that, it is on the basis of the sale deed in their favour. Here in this case, a further fact that has been proved is that, that the suit land was allotted under Section 27 of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act to defendant No.1. When this fact is proved, then obvious question is that, as to whether prior permission of the Collector was taken when defendant No.1 executed sale deed in favour of Manoj Patil. We do not find any such document on record, therefore, the transaction between defendant No.1 and Manoj Patil itself is in contravention of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act. Section 29 (1) of Maharashtra Agricultural Lands (Ceilings on Holdings) Act prohibits all transfers either by way of sell, gift, mortgage, exchange, lease etc. without the previous sanction of the Collector. Neither P.W.2 Manoj Patil nor the plaintiffs on oath have stated that, they had obtained prior permission from Collector before purchasing the land. When the provision of the law itself is very clear which makes it mandatory to obtain previous sanction then in absence of such sanction it will have to be held that the sale transaction between defendant No.1 with Manoj Patil was in contravention of provisions of Section 29 (1) of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act.

9. Both the Courts below have considered the law involved in the

matter properly after appreciating the evidence. Under such circumstance, no case is made out to entertain the second appeal. Hence, the second appeal is disposed of as not admitted.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.