

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

SECOND APPEAL NO.163 OF 2018

Bajirao S/o Girjaji More,
Age-76 years, Occu:Pensioner/Agriculture,
R/o-Bhagur, Tq-Vaijapur,
Dist-Aurangabad

**...APPELLANT
(Orig. Plaintiff)**

VERSUS

- 1) Bhima S/o Yadav Thorat,
Age-Major, Occu:Agriculture,
R/o-Bhagur, Tq-Vaijapur,
Dist-Aurangabad,
- 2) Padmabai W/o Bhima Thorat,
Age-Major, Occu:Agriculture,
R/o-Bhagur, Tq-Vaijapur,
Dist-Aurangabad,
- 3) Genu Fakira More,
Age-Major, Occu:Agriculture,
R/o-Bhagur, Tq-Vaijapur,
Dist-Aurangabad,
- 4) Kaka S/o Ambudas More,
Age-Major, Occu:Agriculture,
R/o-Bhagur, Tq-Vaijapur,
Dist-Aurangabad.

**...RESPONDENTS
(Orig. Defendants)**

...
Mr.Rahul O. Awasarmol Advocate for Appellant.
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CORAM: ANIL S. KILOR, J.

DATE : 15th MARCH, 2021

ORAL ORDER :

1. The challenge raised in the present appeal is to the Judgment and decree dated 19th November 2016 passed by the learned Adhoc District Judge, Vaijapur, District-Aurangabad, in Regular Civil appeal No. 52 of 2015, maintaining the Judgment and decree passed by the learned Civil Judge, Senior Division, Vaijapur in Regular Civil Suit No. 466 of 2011, dated 11th March 2015, dismissing the suit for declaration of ownership in respect of agricultural land admeasuring about six acres out of Gut No. 226, situated at village Bhagur, Tehsil-Vaijapur, District-Aurangabad, and further declaration that the sale deed bearing registration No. 2491/1997 dated 13th June 1997 and that of bearing registration No. 2985/2010 dated 11th June 2010 executed in respect of suit land as void and not binding on the plaintiff.

2. The brief facts of the present case are that (parties shall be referred to as per their original status in the suit), it is

the case of the plaintiff that one Nanasaheb Saluba More had executed an agreement of sale in respect of suit land on 6th June 1975 in favour of the mother of the plaintiff, namely, Vithabai Girjaba More for consideration of an amount of Rs.2,400/- on stamp paper of Rs.3/-. The consideration amount of Rs.2400/- was paid in three installments i.e. Rs.1000/- on 6th June 1975, Rs.900/- on 6th September 1976 and Rs.500/- on 22nd September 1976. The possession of suit land was delivered to the mother of plaintiff on the date of execution of agreement of sale. On 13th June 1997 Nana Saluba More had executed a registered sale deed bearing No. 2491/1997 in respect of suit land in favour of Raju Bhimrao Thorat and Vijay Bhimrao Thorat (sons of defendants No. 5 and 6) and Balu Rambhau Thorat and Ashok Rambhau Thorat i.e. defendant No. 7 (both nephews of defendants No. 5 and 6). The suit land is restricted land and therefore, the requisite permission of Collector, Aurangabad was required to be obtained for the said sale deed. However, the said sale deed was executed without obtaining the requisite permission of the Collector, Aurangabad. The defendant No. 7 had alienated 76 R land out of suit land to defendant No. 6 by a registered sale deed bearing No. 2985/2010 dated 11th June 2010. Defendants No. 8 and 9 have signed aforementioned both

sale deeds even they being acquainted with the fact of execution of agreement of sale dated 6th June 1975.

3. It is the further case of the plaintiff that mother of the plaintiff was in possession of suit land from the date of execution of agreement of sale dated 6th June 1975. After the death of mother of plaintiff, the plaintiff has continuously been in possession of suit land. It is the case of the plaintiff that aforementioned sale deeds are invalid and therefore, the defendants have no right, title and interest in the suit land. However, the defendants are trying to obstruct the possession of plaintiff of the suit land. He, therefore, filed suit for declaration and injunction on the basis of title.

4. The suit was dismissed by the learned trial Court vide Judgment and decree dated 11th March, 2015. The plaintiff feeling aggrieved by the said Judgment and decree, preferred an appeal vide Regular Civil Appeal No. 52 of 2015 before the Ad-hoc District Judge at Vijapur, District-Aurangabad. The learned lower appellate Court dismissed the appeal vide Judgment and decree dated 19th November 2016, which is under challenge in the present matter.

5. Heard learned counsel for the appellant. He submits that three witnesses were examined in support of the transaction which was carried out between the mother of the plaintiff and the original owner of the suit land. It is submitted that all the three witnesses have supported the case of the plaintiff that there was an oral agreement between mother of the plaintiff and the vendor on 6th June 1975. However, on a specific query put to the learned counsel for the appellant about the age of all the witnesses on the date of agreement, he was not able to answer the said query, as no material has been brought on record by the plaintiff in this regard.

6. Moreover, there is no dispute that Regular Civil Suit No. 117 of 1998 filed by the mother of the plaintiff against the owner – Nana Saluba Thorat and others, including the defendants in this matter for declaration and injunction came to be dismissed on 15th April 2004 and the first appeal arising out of the same, namely R.C.A. No. 111 of 2004 came to be dismissed on 30th November, 2005.

7. It is also not disputed that the plaintiff alongwith his sisters and nephew had also filed another civil suit bearing R.C.S. No. 342 of 2004 against Nana Saluba More and others, including present contesting defendants for specific performance of contract, which also came to be dismissed on 13th March 2009.

8. The present suit is the third attempt to seek declaration in respect of the suit property.

9. In view of the above observations, I do not find any substantial question of law involved in the present matter. Accordingly, Second Appeal is dismissed.

[ANIL S. KILOR, J.]