

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 565 OF 1989

Smt. Sharifabi W/o Asefuddin
Age : 46 years, Occ. Agri.,
R/o. Digras, Taluka Hadgaon,
District Nanded

Died leaving behind LRs.

1. Asifoddin Shaikh Modiyoddin,
Age 90 years, Occu. Agril.,
2. Halimabee Saied Ahmed,
Age 50 years, Occu. Household,
3. Babu Zikriya Ahmed Asifoddin,
Age 45 years, Occu. Agril.,
4. Nasimabee Shaikh Salim Ali,
Age 40 years, Occu. Household,
5. Khureshabee Abdul Razak,
Age 35 years, Occu. Household,
6. Ahmedabee Inamulla Khan,
Age 35 years, Occu. Household,

All R/o. At Post Digras,
Taluka Hadgaon,
District Nanded.

.. Appellants
(Original Plaintiff)

Versus

1. State of Maharashtra,
through the Collector,
Nanded
2. Devba S/o. Datta Mang
Age 46 years, Occu. Labourer,
R/o. Choramba, Taluka Hadgaon,
District Nanded (**Died - Dismissed**)
3. Pandu S/o. Dhansing Lamani,
Age 50 years, Occu. Labourer,
R/o. Chabhra, Tanda,
Taluka Hadgaon, District Nanded

Died, leaving behind L.Rs :-

- 3(a) Sundrabai w/o. Pandu,
Age Major, Occu. Household,
R/o. Pimprala (Tanda), Post Digras,
Taluka Hadgaon, District Nanded (Wife)
- 3(b) Neelabai w/o. Uttam Rathod,
Age Major, Occu. Household,
R/o. As above. (Daughter)
- 3(c) Dhawalabai w/o. Ramchandra Rathod,
Age Major, Occu. Household,
R/o. Aswaldari, Taluka Bhokar,
District Nanded. (Daughter)
4. Gangaram Nagoba Budh,
Age 48 years, Occu. Labourer,
R/o. Loha, Taluka Hadgaon,
District Nanded (**Dismissed**)
5. Gyanoba Tukaram Budh,
Age 48 years, Occu. Labourer,
R/o. Loha, Taluka Hadgaon,
District Nanded (**Dismissed**)
6. Mariba Namdeo Mang,
Age : 50 years, Occ. Labourer,
R/o. Digras, Taluka Hadgaon,
District Nanded.

Died, leaving behind L.Rs. :-

- 6-A) Smt. Ansabai w/o. Mariba,
Age 56 years, Occu. Household,
R/o. Digras, Taluka Hadgaon,
District Nanded (Wife)
- 6-B) Smt. Suman w/o. Laxman Bidiwar,
Age 35 years, Occu. Household,
R/o. Raodhanora, Taluka Biloli,
District Nanded (Daughter)
- 6-C) Smt. Vanda w/o. Mariba,
Age 26 years, Occu. Household,
R/o. Halda, Taluka Bhokar,
District Nanded (Daughter)
- 6-D) Sow. Kamal w/o. Laxman Junekar,
Age 22 years, Occu. Household,
R/o. Digras, Taluka Hadgaon,
District Nanded (Daughter)

- 6-E) Khandu s/o. Mariba,
Age 36 years, Occu. Agri.,
R/o. Digras, Taluka Hadgaon,
District Nanded (Son)
- 6-F) Maroti s/o. Mariba,
Age 31 years, Occu. Agri.,
R/o. Digras, Taluka Hadgaon,
District Nanded (Son)
- 6-G) Sambha s/o. Mariba,
Age 29 years, Occu. Agri.,
R/o. Digras, Taluka Hadgaon,
District Nanded (Son)
- 6-H) Bhagwan s/o. Mariba,
Age 27 years, Occu. Agri.,
R/o. Digras, Taluka Hadgaon,
District Nanded (Son)
7. Chandu s/o. Satwa Budh,
Age : 48 years, Occ. Labourer,
R/o. Digras, Taluka Hadgaon,
District Nanded.

Died, leaving behind L.Rs :-

- 7-A) Geetabai Chandu Narle,
Age 70 years, Occu. Agril.,
R/o. At Post Digras, Taluka Hadgaon,
District Nanded.
- 7-B) Panchphulabai Babusha,
Age 40 years, Occu. Labour,
R/o. At Post Digras, Taluka Hadgaon,
District Nanded.
- 7-C) Kausaliyabai Gangaram Kasbe,
Age 34 years, Occu. Labour,
- 7-D) Deelip Chandu Narle,
Age 32 years, Occu. Labour,
- 7-E) Sumanbai Sheshrao Tmbe,
Age 28 years, Occu. Labour,
- 7-F) Satwa Chandu Narle,
Age 25 years, Occu. Agril.,

All R/o. At Post Digras,
Taluka Hadgaon, District Nanded.

8. Vankati Namdeo Budh,
Age : 48 years, Occ. Labourer,
R/o. As above. **(Abated)**
9. Sambha Rama Varik,
Age : 48 years, Occ. Labourer,
R/o. As above. **(Dismissed)**
10. Kerba Punjaji Tali,
Age : 50 years, Occ. Labourer,
R/o Digras, Taluka Hadgaon,
District – Nanded **(Dismissed)**
11. Asefuddin S/o Mohiuddin,
Age : 50 years, Occ. Agri.,
R/o Digras, Taluka Hadgaon,
District – Nanded

.. Respondents
(Original Defendants)

...
Mrs. U.T. Pathan, Advocate h/f. Mr. T.W. Pathan, Advocate for appellant
Mr. S.W. Munde, AGP for respondent - State
Mr. N.S. Chaudhari, Advocate for respondents no. 3(a) to 3(c), 6-A to 6-H
Respondents no. 2, 4, 5 and 9 are dismissed as per Courts order dated 18-06-2010
Respondents no. 7-A to 7-F are dismissed as per Courts order dated 29-04-2015
Respondent no. 8 abated as per Courts order dated 16-09-2015
Respondent no. 10 dismissed as per Registrar's order dated 14-01-2011
...

CORAM : MANGESH S. PATIL, J.

DATE : 18 JANUARY 2022

ORAL JUDGMENT :

This appeal under section 100 of the Code of Civil Procedure by the original plaintiff's legal representatives, challenges the concurrent findings of the two courts below refusing to grant the relief of declaration of appellant's title to the suit land and possession. They also claimed a declaration that the orders passed by the Deputy Collector dated 30-09-1965 and 17-07-1978, declaring the suit land being survey no. 43 admeasuring 23 Acres 5 Gunthas situated at

village Digras, Taluka – Hadgaon, District – Nanded was surplus in an enquiry under section 14 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as “**Ceiling Act**”).

2. The sum and substance of the averments in the plaint are to the effect that original plaintiff Sharifabi was legally wedded wife of the respondent no. 11 - Asefuddin, who was the defendant no. 11 in the suit. Their marriage was solemnized on 30-05-1956. The suit land was given to her under *Mehrpatra* dated 11-03-1959. The respondent no. 11 also put her in possession and since that date, she had become the absolute owner and continued to enjoy possession.

3. She then averred that the proceeding under section 14 of the Ceiling Act commenced. Respondent no. 11 submitted returns on 23-11-1962, disclosing his total holding to be 124 Acres 7 Gunthas. The proceeding proceeded and concluded with the passing of the order in respect of which a declaration was claimed. It has been her case that inspite of the owner of the suit land, she was never issued any notice of the proceeding as is required by section 17 of the Ceiling Act. When the enquiry was going on, respondent no. 11 never disclosed about existence of such *Mehrpatra* which resulted in passing of the order under challenge. Thus, she claimed the declarations as mentioned herein-above and possession of the suit property.

4. The respondent no. 1 i.e. the State opposed the suit by filing written statement Exhibit – 22, denying the entire claim of the

appellant and raised an issue regarding jurisdiction of the civil court to grant declaration in respect of the proceeding under the Ceiling Act. It was further contended that the suit was filed in collusion between Sharifabi and the respondent no. 11, who are wife and husband, to defeat the purpose of the Ceiling Act. All the procedure, as was required to be followed under the Ceiling Act, was duly followed while passing the order under challenge declaring the suit land to be surplus. There was no illegality and the suit was dismissed.

5. It is pertinent to note that after the declaration of the suit land being surplus, pursuant to the provisions of the Ceiling Act, it was allotted to the respondents no. 2 to 10.

6. The trial court framed necessary issues. Holding that there was no proof of there being a valid and genuine *Mehrptra* and that there was collusion between Sharifabi and the respondent no. 11 and that the civil court had no jurisdiction in view of section 41 of the Ceiling Act, the suit was dismissed.

7. Sharifabi challenged the order of the trial court by filing an appeal before the District Court. By the judgment and order under challenge in the Second Appeal, the District Court concurred with all the findings of the trial court and dismissed the appeal. Hence, this Second Appeal by her. She having died during pendency of this Appeal, it is being prosecuted by her legal representatives.

8. The Second Appeal was initially admitted only on the question of law regarding registration of the *Mehrpatra* - Exhibit – 56. However, subsequently, by the order dated 18-09-2018, substantial questions of law were formulated as under :-

[I] Whether the Sections 123 to 129 of Transfer of Property Act, 1882 provides exemption from registration of document “*Meher Nama*” ?

[II] Whether the instances of the Court below for the compulsory registration of the kind document like Exhibit 56 is completely misplaced ?

[III] Whether the point of gifting away the property in consideration of marriage as per the recital of the “*Meher Nama*” constitute a valid disposition of the property in the eye of law ?

[IV] Whether the plaintiff could have called the defendant as her witness who has been arrayed in the category of opponents ?

[V] Whether the decision under the Ceiling Act and questioned in the Civil Court and is there any ouster of jurisdiction ?

[VI] Whether there is any perversity in the concurrent decisions rendered by the Courts below ?”

9. I have heard the learned Advocate Mrs. Pathan for the appellant, the learned Assistant Government Pleader and the learned Advocate Mr. Chaudhari for some of the other respondents.

10. The learned Advocate for the appellant would vehemently submit that pursuant to the provisions of Mohammedan law, the

Mehrpatra had the effect of transfer of the suit land. Sharifabi was never served with any notice in respect of the proceeding that was undertaken under the provisions of the Ceiling Act. Respondent no. 11 had never disclosed the fact of such *Mehrpatra*. The order was passed behind her back. She could not have preferred any appeal, not being a party to the proceeding and had no remedy except by filing the suit. She was left with no other alternative. Her valuable rights would now be defeated if the orders of both the courts below are allowed to be sustained. The courts below have clearly ignored the fact of existence of *Mehrpatra* and the rights created therein in favour of the appellant. Inference of collusion could not have been drawn merely because the respondent no. 11 did not step in the witness box. Being an adversary, the appellant could not have called him as a witness. *Mehrpatra*, though had the effect of transfer of the suit land, it was exempt from registration in view of the provisions of section 123 to 129 of the Transfer of Property Act. The courts below have not appreciated all the facts, circumstances, evidence and the law which has given rise to the substantial questions formulated in the matter and this Court should cause interference in exercise of the powers under section 100 of the Code of Civil Procedure.

11. The learned AGP and the learned Advocate for the other respondents would support the concurrent findings of the two courts below. They submit that both the courts below rightly observed that there were circumstances indicating collusion between Sharifabi and

her husband – respondent no. 11. These observations are based on the material that was available before them, based on which, they have taken a plausible view. Since the conclusions are based on proper appreciation of the material on the record, this court should not interfere in exercise of powers under section 100 of the Code of Civil Procedure.

12. The learned AGP and Mr. Chaudhari would then submit that, the appellant is directly challenging the order passed under the Ceiling Act. By virtue of section 41 of that Act, jurisdiction of civil court is expressly barred. Both the courts below were alive to such legal position and have held Sharifabi not entitled to claim any such declaration.

13. I have carefully considered the rival submissions and perused the papers. As can be appreciated, the fate of the matter hinges on the sole question as to if the appellant is entitled to challenge the order passed in a proceeding under section 14 of the Ceiling Act, whereby it has been declared that the suit land is a surplus land and has subsequently been taken over and allotted to the other respondents. Section 41 of the Ceiling Act, reads as under :-

“41. No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Commissioner, Collector, Tribunal, the officer authorised under section 27, the Maharashtra Revenue Tribunal or the State Government.

Explanation. - For the purpose of this section a civil court shall include a Mamlatdar's Court constituted under the Mamlatdars' Courts Act, 1906."

14. Needless to state that under the section 33 of the Ceiling Act, an appeal has been provided against an order passed by the Collector in the form of a declaration regarding surplus land under section 21. Needless to state that in view of such express bar, no exception can be taken to the conclusions of the two courts below holding that the appellant was not entitled to claim declaration in respect of the order passed in the matter of her husband – respondent no. 11's proceeding declaring the suit land to be a surplus land.

15. The submission of the learned Advocate for the appellants that Sharifabi being not a party to the proceeding under the Ceiling Act, she could not have challenged the order, is not legally tenable. If she was a person affected by the order passed under that Act, as she was claiming her exclusive title to the suit land pursuant to the alleged *Mehrpatra*, she could have certainly taken appropriate steps to challenge the order passed under that Act by resorting to the provision of appeal contained in section 33 of that Act, may be with the leave of the appellate authority. Not being a party to the proceeding before the lower authority, can never be an anathema to challenge the order passed before the appellate fora, the only rider would be to demonstrate that the rights and interests are affected by the order under challenge.

16. Instead of taking recourse to any such challenge, Sharifabi seems to have devised the remedy of filing a suit seeking a declaration. However, both the courts below were correctly on guard and refused to exercise the jurisdiction which did not vest in them.

17. Again, keeping aside the dispute as to whether there, in-fact, was a *Mehrpatra* and whether it is compulsorily registrable or otherwise, the fact remains that there are no allegations that the relations between Sharifabi and her husband – respondent no. 11 were strained. She did not come out with a case that he was having any grudge against her. If really the suit land was given by him to her under that *Mehrpatra*, one cannot comprehend; atleast there is no evidence on record, to draw any inference as to what could have made him not disclose this fact of *Mehrpatra* when he submitted returns under the Ceiling Act disclosing his total holdings including the suit land. This is indeed a clinching circumstance which has been rightly weighed with the two courts below while drawing a plausible inference about there being collusion between the two. The latter having suffered the order under the Ceiling Act and the order having reached finality, in all probability, the couple seems to have devised a mode to somehow object to such declaration of surplus land given under the Ceiling Act.

18. Considering all the afore-mentioned facts and circumstances, bearing in mind the limited scope available for this

Court to cause interference in exercise of the powers under section 100 of the Code of Civil Procedure, when the courts below have taken a plausible view based on the evidence laid before them, in my considered view, none of the afore-mentioned questions, as formulated by order dated 18-09-2018, in-fact, arise for determination at the hands of this Court.

19. The Appeal is dismissed with costs.

[MANGESH S. PATIL]
JUDGE

arp/