

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL 461 OF 2019
WITH
CIVIL APPLICATION NO. 9148 OF 2019**

1. Suraj S/o. Shankar Garad,
Age. 31 years, Occ. Agriculture,
2. Sachin S/o. Shankar Garad,
Age. 35 years, Occ. Agriculture,
3. Indubai W/o. Shankar Garad,
Age. 55 years, Occ. Agriculture,
4. Shankar S/o. Jagannath Garad,
Age. 59 years, Occ. Agriculture,

All R/o. Satephal, Tq. Kallam,
Dist. Osmanabad.

....Appellants
(Orig. Defendants)

Versus

1. Shivaji S/o. Atmaram Sirsat,
Age. 59 years, Occ. Agriculture,
2. Bharat Atmaram Sirsat,
Age. 55 years, Occ. Agriculture,
3. Rupabai W/o. Atmaram Sirsat,
Age. 84 years, Occ. Agriculture,

All above R/o. Satephal, Tq. Kallam,
Dist. Osmanabad.

Orig. Plaintiffs.

4. Lata W/o. Shivaji Pawar,
Age. 52 years, Occ. Agriculture,
R/o. Wagholi, Tq. Kallam,
Dist. Osmanabad.

...Orig. defendant No. 5
....Respondents

CORAM : RAJESH S. PATIL, J.

Judgment reserved on : 17.10.2022

Judgment pronounced on : 19.12.2022

JUDGMENT :

1. This Second Appeal is filed by original defendant against the concurrent finding of ownership and possession in favour of the plaintiff.

2. The original plaintiff claimed to be owner of land, block No. 182 admeasuring 1 hector 6 ares at village Satephal, Taluka Kallam. The plaintiff claimed their ownership through their predecessors. One Mr. Atmaram who is the father of plaintiff Nos. 1 and 2 and husband of plaintiff No. 3. The said Atmaram's mother Lochanabai was owner of the suit land before Atmaram. Before Lochanabai her mother Gangubai was the owner of the suit land. The plaintiff had claimed that there was a gift deed executed in the year 1946 by Gangubai in favour of her daughter Lochanabai. It is the case of defendant that their predecessor in title was tenant in the suit land. However, the defendant also claimed that they are the owners of the suit land pursuant to an agreement of sale and subsequently a sale deed. The defendant No. 5 claimed that she purchased the suit land by agreement executed by defendant Nos. 1 to 4 in her favour.

3. The plaintiff filed a suit for a declaration of their

title and for possession. The said suit was decreed and the defendants were directed to hand over possession. The defendant Nos. 1 to 4 filed appeal before the District Court being appeal No. 219/2014 and defendant No. 5 filed a separate appeal being RCA No. 22/2014 both the appeals were heard together and by a common judgment and order dated 24.11.2017, both the appeals were dismissed only original defendant Nos. 1 to 4 have preferred the present Second Appeal on 09.02.2018. The original defendant No. 5 has not filed any separate Second Appeal.

4. It is the case of the defendants that the Court did not frame tenancy issue. However, such a plea was only taken up for the first time in the District Court. Admittedly, the defendants have not filed in separate application before the tribunal claiming themselves as tenant.

5. It is the case of defendant that their predecessor namely Jagannath's name was entered in the record of rights as a "tenant". It is further case of defendant that there was a agreement of sale in their favour. However, no such document proving the title of defendants as tenant and / or as owner is brought of record. Therefore, even though revenue records showed the name of Jagannath that would not bestow the right of tenancy on the defendants. On the failure of defendant Nos. 1 to 4 to prove their title any further transaction dealt with by defendant No. 2 in favour of defendant No. 5 is no

meaning in law.

6. The defendant No. 5 filing a suit against defendant Nos. 1 to 4, does not help her, since the plaintiff in the present proceedings are not party in her suit. Therefore, the dismissal of the counter claim in the lower Court and the dismissal of appeals filed by defendant Nos. 1 to 4 and defendant No. 5 seems to be proper and justifiable

7. No substantial question of law arises in the present Second Appeal filed by original defendant Nos. 1 to 4. Hence, the Second Appeal stands dismissed.

(RAJESH S. PATIL, J.)