

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

**SECOND APPEAL NO.556 OF 2016
WITH
CIVIL APPLICATION NO.11423 OF 2016
WITH
CIVIL APPLICATION NO.11424 OF 2016**

1. Namdeo s/o. Laxman Ghunghase,
Age : 55 years, Occ. Agri.,
r/o. Golegaon, Tq. Partur,
Dist.Jalna
 2. Sitaram s/o. Laxman Ghunghase,
Age: 45 years, Occ. Agri.
r/o. As above
- ..Appellants

Vs.

1. Dattatraya s/o. Suryabhan Taur,
Age : 45 years, Occ. Agri.,
r/o. Golegaon, Tq. Partur,
Dist. Jalna
 2. Rajendra s/o. Nivruti Taur,
Age : 55 years, Occ. Agri.,
r/o. Changatpuri, Tq. Partur,
Dist. Jalna
- ..Respondents

Mr.Shubhangi More, Advocate h/f. Ms.Sunita S. Raje Jadhav, Advocate
for appellants

Mr.R.R.Mane, Advocate for respondent no.1

**CORAM : R.G. AVACHAT, J.
RESERVED ON : OCTOBER 03, 2022
PRONOUNCED ON : OCTOBER 18, 2022**

ORDER :-

The challenge in this appeal is to the judgment and decree dated 31.03.2011 passed by learned Civil Judge, Junior Division, Partur, in Regular Civil Suit No.187 of 2002 and confirmed by learned Ad-hoc District Judge-3, Jalna, vide its judgment dated 06.01.2015 in Regular Civil Appeal No.210 of 2012. The appellants herein are original defendant nos.2 and 3 in the suit. The respondents herein are the plaintiff and defendant no.1 in the suit. It was a suit for declaration of the plaintiff's title to the agricultural land, particularly described in paragraph 1 of the plaint, and for consequential relief of possession thereof.

2. Heard learned counsel appearing for the parties.

3. Learned counsel for the appellants would submit that the owner of the suit land, from whom the appellants purchased the land, was not made party to the suit. A ground of non-joinder of necessary party was raised in the written statement. Moreover, learned counsel representing the appellants herein, did not represent their cause properly. Neither the witnesses for the plaintiff were cross-examined nor any evidence was produced on behalf of the

appellants/defendants. According to learned counsel, there were three sale deeds executed in respect of the land belonging to the original owner. The description of the land given in the suit and one purchased by the respondent-plaintiff herein, is altogether different. Learned counsel has relied on the decision of the **High Court of Punjab and Haryana at Chandigarh** in the case of **Randhir Singh Vs. State of Haryana and ors., CWP No.1624 of 2015**. She has proposed following substantial questions of law for deciding in the present Second Appeal:-

1. Whether the suit is hit by non-joinder of parties?
2. Whether the suit is barred by the limitation?
3. Whether suit property is not clearly showing four boundaries and different area?
4. Whether earlier registered sale deed bearing Sr. No.1036/1983 dated 19/05/1983 is intact till today?
5. Whether the suit property is different than the property of the appellants?
6. Whether the suit property is in the possession of the appellants being legal owners on the basis of sale deed bearing Sr. No.1037/1990, mutation entry and 7/12 extract ?
7. Whether the contents of the admission in the plaint of plaintiff in respect of ownership and possession, on the basis of sale deed held by them dated 03/05/1990, sale deed Sr. No.1437/1990 and registered sale deed Sr. No.144/1985 dated 23/01/1985, are legal?

4. Learned counsel for respondent no.1 (original plaintiff) would, on the other hand, submit that no substantial question of law arises in the present Second Appeal. According to her, the first appellate Court had remanded the suit back to the trial Court with a view to give the appellants an opportunity to lead evidence in support of their claim of adverse possession. They did not avail the same. Learned counsel urged for dismissal of the appeal.

5. Considered the submissions advanced. Perused the judgments passed by the trial Court and that of the first appellate Court.

6. Almost all the facts are not in dispute. One Rajendra Taur, a minor, was the original owner of the land admeasuring 5 Acres and 2 Gunthas in Gut No.40 (Old survey no.14). On one and the same date, i.e. 19.05.1983, Rajendra, through his guardian, executed two sale deeds. Under the first sale deed, registration number of which is 1036, Rajendra through his guardian (father), sold 2 acres of land to one Bapurao Tatya Pohekar. The land sold to Bapurao Pohekar has been specifically described in the sale deed. On sale of the said land, the land admeasuring 3 Acres and 2 Gunthas still remained with the original owner, Rajendra.

Vide registered sale deed no.1037 executed on the same day, Dattatraya Taur, respondent no.1 (plaintiff) purchased the remaining land belonging to Rajendra Taur, i.e. 3 Acres and 2 Gunthas. The description of the said land has specifically been given in the sale deed. Onto the north of the said land, the land purchased by Bapurao Pohekar, is shown. The appellants herein claimed to have purchased 1 H and 23 R land from Bapurao Pohekar under the registered sale deed dated 03.05.1990. The averments in the appeal memo indicate that the appellants admit all these sale deeds. It is their case that Bapurao Pohekar purchased 1 Acre and 1 R land from the original owner under the sale deed 23.01.1985. We find all these averments in paragraphs X and XI of the appeal memo.

7. In the first round of litigation, the suit was dismissed. The original plaintiff (respondent no.1 herein) preferred first appeal being, Regular Civil Appeal No.158 of 2005. The appellate Court allowed the same and remanded the suit back to the trial Court. The appellants herein were represented by a legal practitioner. The suit was remanded to give the appellants opportunity to make out their case of adverse possession. Admittedly, they did not lead any evidence post remand of the suit. The suit came to be decreed. It

is reiterated that the first appellate Court affirmed the judgment and decree. The first appellate Court dismissed the appeal with the following observations:-

18. It is admitted fact that the suit property was previously belonging to Rajendra Nivratti Taur. It is also admitted fact that Rajendra Nivratti Taur executed the sale deed of suit property in favour of respondent no.1 and on the same day he executed sale deed of his remaining land in same block in favour of Bapurao Tatya Pohekar. The sale deeds are at Exh.45 and 4/5. It is not certain whether the trial Court admitted in evidence the sale deed exh.4/5. But, this sale deed was not denied by appellants. It was filed by resp. no.1. So I admit this document in evidence. It reveals that the sale deed exh.45 which was executed in favour of respondent no.1 was first in point of time. The rule made by Hon'ble Allahabad High Court in Vednath's case is perfectly applicable. Exh.45 will prevail over exh.4/5. The respondent no.1 proved his title to the suit property. Accordingly, I answer the point no.2 in affirmative."

8. In short, the original owner, Rajendra Taur, held 5 Acres and 2 Gunthas land in Gut No.40. He first sold 2 Acres of land to Bapurao Pohekar. The appellants herein claimed through Bapurao Pohekar. They claimed to have purchased 1 H 3 R land through

Bapurao Pohekar under registered sale deed dated 03.05.1990. Admittedly, on the same day, on which Bapurao Pohekar purchased 2 Acres of land from the original owner – Rajendra, Rajendra sold his remaining land to the appellants herein. As such, nothing remained with the original owner to sell any land to Bapurao Pohekar, subsequent to these two sale deeds. The description of the properties sold under two sale deeds has specifically been given therein. The appellants herein claimed title to the suit land by adverse possession, meaning thereby, they admitted ownership of the respondent-plaintiff thereto. They did not lead any evidence in proof of their claim. The respondent/plaintiff claimed relief of declaration of his title and consequential relief of possession in respect of the land purchased under the registered sale deed (Exhs.4/5 – registration no.1037).

9. The trial Court, thus, rightly decreed the suit. The first appellate Court committed no wrong in confirming the same. As such, no substantial questions of law as have been suggested by learned counsel for the appellants herein, arise in this Second Appeal. The appeal, therefore, fails. The same is dismissed.

10. In view of dismissal of the appeal, Civil Applications stand disposed of.

[R.G. AVACHAT, J.]

KBP