

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

**SECOND APPEAL NO.241 OF 2017
WITH CA/14406/2015 IN SA/241/2017**

Pankaj S/o Sambhaji Kate,	]	
Age : 37 Years, Occu. : Business,	]	
R/o Murud, Taluka and Dist. Latur.	]	... Appellant.

Versus

Sow. Jayshree Bhaskarrao Ritpure,	]
Died through Legal Representative	]

1. Bhaskar S/o Babasaheb Ritpure,	]
Age : 59 Years, Occu. : Service,	]

2. Kunal S/o Bhaskar Ritpure,	]
Age : 30 Years, Occu. : Service,	]

3. Kapil S/o Bhaskar Ritpure,	]
Age : 28 Years, Occu. : Agriculture,	]

4. Gaurav S/o Bhaskar Ritpure,	]
Age : 27 Years, Occu. : Service,	]

Respondent Nos.1 to 4	]
All R/o Aditya Garden City,	]
Near Sinhagadh College,	]
Warje, Pune, Taluka and District Pune.	]

5. Mallikarjun Chanappa Shete,	]
Age : 53 Years, Occu. : Agri. and Business,	]
R/o. Ambaleshwar Galli, Latur,	]
Taluka and District Latur.	]

... Respondents.

[Respondent Nos.1 to 4 are
Orig.Plaintiffs and Respondent
No.5 Orig.Defendant No.2.]

...

Ms. Madhaveshwari S. Mhase, Advocate for Appellant.

Mr. A. D. Sonkawade h/f. Mr. A. V. Hon, Advocate for Respondent Nos.1 to 4.

...

CORAM : BHARAT P. DESHPANDE, J.

DATED : 11th AUGUST 2022

ORDER :

Heard.

2. The present Appeal is challenging Judgment of both the Courts below. Suit was filed by respondents/original plaintiff Nos.1 to 4 for perpetual injunction against the present appellant bearing R.C.S. No.176 of 2011.

3. Vide Judgment dated 27th February 2013 learned Civil Court dismissed the suit. Respondent Nos.1 to 4 preferred an appeal bearing Regular Civil Appeal no.77 of 2013. Vide Judgment dated 16th January 2015 the learned District Judge – 2 at Latur allowed the said Appeal, quashed and set aside the Judgment and Decree of the trial court and decreed the suit. The appellant is challenging the said judgment of the Appellate Court.

4. Learned counsel for the appellant strenuously urged that in spite of specific pleadings raised in the written statement disputing about the identity of the suit property, no specific issue was framed by the learned trial court. Learned first Appellate Court has also failed to consider and decide the vital aspect of identification of the suit plot. She invited attention of this Court to sale deeds of the plaintiffs as well as that of defendant.

5. On perusal of both the sale deeds it clearly goes to show that boundaries of plot no.1 mentioned therein are different. Admittedly, there is

no plan attached to the sale deed of the plaintiff. The sale deed mentioned that the plaintiff after purchasing the suit plot will have to move the authorities for getting land converted into non agricultural use. The sale deed of the defendant specifically refers to plot no.1 which is converted into non agricultural use.

6. Learned counsel for respondents forcefully submitted that first Appellate Court as well as learned trial court has clearly observed that the suit plot has been properly identified. However, on perusal of both the decisions and more specifically the issues/points framed for decision, there is no specific issue with regard to identification of the suit plot. Both the parties pleaded that they constructed structure on the suit plot and are claiming possession over it.

7. The written statement filed by defendant fairly disputed about the identification of the suit plot as claimed in the plaint. It is their contention that no such land exist in the said property. Therefore, it was necessary for the learned trial court to frame specific issue with regard to identification of the suit property as provided under Order 14, Rule 1 of the Code of Civil Procedure. However, no such issue was framed. Learned first Appellate Court also failed to consider this vital aspects.

8. Second important aspect is the powers of the learned Civil Court for appointment of the Commissioner to identify the suit plot as per the

boundaries mentioned in the sale deed. No such exercise was carried out.

9. After hearing learned counsel for the parties with regard to the matter for admission, both the learned counsel submit that the matter could be remanded back to the learned Civil Court with specific directions to frame issues with regard to identification of the suit property and to appoint Commissioner to that effect.

10. On perusal of decisions of both the courts below, it is observed that first and foremost exercise was to identify the suit plot as claimed by the plaintiffs and only thereafter to decide whether the plaintiffs are entitled for the relief claimed therein. For want of such exercise, reasons given by the courts below are of no substance, since both the parties are claiming possession over the plot, though the boundaries in the sale deeds shown differently.

11. Thus, in the interest of justice and to give opportunity to the parties to identify the suit plot, both the Judgments of the courts below needs to be quashed and set aside and the matter needs to be remanded to the learned Civil Court with a direction to frame specific issues regarding identification of the suit property, to give opportunity to the parties to lead evidence on that aspect and thereafter decide the suit afresh.

12. With these observations, I pass following order :-

ORDER

- (i) Second Appeal is partly allowed.
- (ii) The Judgment and Order passed by the first Appellate Court in Regular Civil Appeal no. 77 of 2013, dated 16th January 2015 and Judgment in R.C.S. No.176 of 2011, dated 27th February 2013 are hereby quashed and set aside.
- (iii) R.C.S. No.176 of 2011 is restored to file of the learned Civil Judge Junior Division, Latur.
- (iv) The learned Civil Court is directed to frame specific issue with regard to identification of the suit plot. Thereafter, to give opportunity to the parties to lead evidence on the said issue and only thereafter decide the suit afresh, within a period of six months from the date of first appearance of the parties.
- (v) Record and proceedings be returned to the trial court.
- (vi) Both the parties shall appear before the Civil Judge Junior Division, Latur. on 12th September 2022.
- (vii) The learned Civil Court shall decide the said suit within a period of six months thereafter.
- (viii) With these observations, Second Appeal stands disposed of.
- (ix) In view of disposal of Second Appeal, pending Civil Application does not survive and is accordingly disposed of.

(BHARAT P. DESHPANDE, J.)