

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

SECOND APPEAL NO. 733 OF 2022

Smt. Madhumati Sanjay Kumar Magar,
Age : 41 Major, Occupation : Household,
R/o. At 5-2-97/P, Mogalpura,
Near Police Head Quarters,
Taluka and District Aurangabad.
Through General Power of Attorney,
Sanjaykumar Magar,
Age : Major, Occupation : Business,
R/o. At 5-2-97/P, Mogalpura,
Near Police Head Quarters,
Taluka and District Aurangabad.

...Appellant

Versus

Municipal Corporation, Aurangabad
through it's Deputy Commissioner, Aurangabad,
Taluka and District Aurangabad.

...Respondent

.....
Mr. G. D. Jain, Advocate for the appellant
Mr. Ameet R. Vaidya, Advocate for respondent
.....

AND
CIVIL APPLICATION NO. 12400 OF 2022
IN
SECOND APPEAL NO. 733 OF 2022

Smt. Madhumati Sanjay Kumar Magar

...Applicant

Versus

Municipal Corporation, Aurangabad
through it's Deputy Commissioner, Aurangabad,
Taluka and District Aurangabad.

...Respondent

.....
Mr. G. D. Jain, Advocate for the applicant
Mr. Ameet R. Vaidya, Advocate for respondent
.....

CORAM : RAJESH S. PATIL, J.

RESERVED FOR JUDGMENT ON : 22nd NOVEMBER, 2022
JUDGMENT PRONOUNCED ON : 09TH DECEMBER, 2022

JUDGMENT :-

1. This appeal is filed by the original plaintiff against the concurrent findings of both the lower Courts.

2. Plaintiff claimed to be owner of the suit property i.e. C.T.S. No. 16029/11, *ad measuring* 1177.3 sq.mtrs. Plaintiff claims to have purchased the suit property from one Yusufuddin Magarbee by a registered Sale Deed dated 25.05.1987. Plaintiff claims that she got knowledge in the year 1996 about some illegal construction being raised on the suit property and hence she filed a suit for declaration and mandatory injunction being Reg. Civil Suit No. 955/1996 (old number) against Corporation and eight others. The defendants opposed that suit and by a Judgment and Order dated 12.02.2015, the said suit was dismissed. The plaintiff filed an appeal being Reg. Civil Appeal No. 107/2015, which was also dismissed by a Judgment and Order dated 19.01.2022.

3. During the pendency of appeal before the District Court, defendants no. 3, 3(i), 4, 7 and 9 were reported to be dead, however, no steps were taken by plaintiff against them. Hence, appeal before the District Court stood abated and dismissed against the said defendants.

4. In the suit, the plaintiff had produced on record various document and led evidence through her husband being General Power of Attorney holder. The plaintiff's power of attorney holder was unable to state whether the suit property is situated in Survey No. 50 or Survey No. 50/1. Plaintiff has also not described the survey number upon which the suit property is situated. The defendants led their evidence through their officer and claimed that the suit property is situated upon Survey No. 50/1. Defendants raised objection to the title of the plaintiff. According to the defendants, the suit property is from sanction layout by the defendant Corporation and once the layout is sanctioned the owner cannot sale the property. Initially on 07.03.1974, a tentative sanction was given to the layout of the Corporation and thereafter on 07.01.1975, revised layout was sanctioned. In both the layouts, suit property is shown as open space, hence the original vendor was prohibited from selling the suit property being an open space as per the layout. The plaintiff's claim

of purchasing the property much later on 25.05.1987, does not hold any weight.

5. Hence, plaintiff (appellant herein) was not able to prove ownership in respect of the suit property in absence of specific identification and in view of the sanctioned layout which was much prior to the alleged purchase by the plaintiff. Therefore, the plaintiff failed to prove the legal ownership over the suit property and hence she is not entitled for any relief of declaration.

6. No substantial question of law arises against the concurrent findings recorded by both the courts below and hence, Second Appeal is dismissed.

7. In view of dismissal of second appeal, nothing remains to be considered in the connected civil application and hence same stands disposed off.

[RAJESH S. PATIL]
JUDGE