

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

**SECOND APPEAL NO. 3 OF 2019
WITH CA/330/2019 IN SA/3/2019**

Vilas Sahebrao Aghav and Others

..APPELLANTS

VERSUS

Sakhubai Chhabu Kshirsagar

(Dead) Through L.Rs.

Shamrao Chhabu Kshirsagar and Others

..RESPONDENTS

....

Mr. A.D. Aghav, Advocate for appellants

Mr. M.H. Shaikh, Advocate for respondent nos.1A to 1C

....

CORAM : R.G. AVACHAT, J.

DATE : 29th SEPTEMBER, 2022

PER COURT :

1. Heard.

2. The challenge in this second appeal is to judgment and decree dated 26th July, 2018 passed by the Ad-hoc District Judge-6, Ahmednagar in Regular Civil Appeal No. 262 of 2014. The appellants herein are the original Defendant nos.4 to 6 in Regular Civil Suit No. 406 of 2007. It was a suit for partition and separate possession of the land bearing Gut No.154. The trial Court dismissed the suit holding the suit land to be an exclusive property of Defendant Nos.1 to 3.

3. The plaintiffs, therefore, preferred the first appeal. The same came to be allowed. The claim of the plaintiffs in the suit was that the suit land was an Inam land. It was originally granted to one Balwant. On his demise, Balwant's elder son – Eknath got it re-granted in his name by virtue of rule of primogeniture. However, since the land was originally granted to Balwant, who was common ancestor, on his demise the re-grant would enure for the benefit of the entire progeny of deceased Balwant and not Eknath alone. The heirs of Eknath sold the suit land to the present appellants disregarding claim of the plaintiffs.

4. The first appellate Court accepted claim of the plaintiffs and decreed the suit. It appears that the suit land was inferior *watan* land. The provisions of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 and the provisions of inferior Vatan Abolition Act are *pari metria*. In case of ***Annasaheb Bapusaheb Patil and Ors. Vs. Balwant alias Balasaheb Babusaheb Patil (Dead) by L.Rs. And Heirs etc., 1995 (1) ALL MR 352***, the Apex Court has observed that once the land is re-granted to anyone of the family members of the original *watandar*, the land would enure for the benefit of all the members of the family meaning thereby, the land would partake character of a joint family property. As such, the original plaintiffs, who are the legal representative of the real brother of deceased – Eknath, did have undivided share in the suit land. The contention of learned counsel for the

appellants that Eknath, on demise of Balwant inherited the suit land by virtue of rule of primogeniture does not stand in the face of Apex Court's judgment in Annasaheb Patil's case (supra). On the question of bona fide purchase for valuable consideration is concerned, it is to be stated that the appellants had admittedly not given a public notice before purchasing the suit land. As such, no substantial question of law does arise in this second appeal.

5. Second appeal stands dismissed. In view of the same, civil application stands disposed of.

(R.G. AVACHAT, J.)

SSD