

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 542 OF 2005

Vijaya w/o Diwakar Patne,
Aged about 35 years,
Occupation-Business,
R/o. Plot No.18, Nehru Nagar,
Nagpur (On R.A.)

.. Appellant

.. Versus ..

1. Ganraj s/o Jangluji Dhongle,
Aged about 53 years,
Occupation-Service,
R/o. Shiwangaon, Nagpur (On R.A.)

Legal Heirs of Respondent No.1.

- i) Smt. Sushila w/o Ganraj Dhongle,
- ii) Shri Satish s/o Ganraj Dhongle,
Aged about 40 years.
- iii) Shri Suraj s/o Ganraj Dhongle,
Aged about 18 years.
- iv) Ku. Asmita d/o Ganraj Dhongle,
Aged about 35 years.

Nos. (i) to (iv) R/o. Plot No.149,
Prashant Nagar, Ajni Square, Wardha Road,
Nagpur.

- v) Smt. Sharda w/o Vilas Patil,
Aged about 37years,
R/o. Near Wadi Police Station, Shivshakti,
Nagar, Nagpur.

vi) Smt. Sarita w/o Vijay Nitnaware,
Aged about 37 years,
R/o. Patankar Chowk, Jai Bhim Nagar,
Indora, Nagpur.

2. Bhanudas s/o Jangluji Dhongle,
Through L.Rs.

2 i) Shri Nagsen s/o Bhanudas Dhongle,
Aged Major.

2 ii) Shri Bhimsen s/o Bhanudas Dhongle,
Aged Major.

2 iii) Shri Veersen s/o Bhanudas Dhongle,
Aged Major.

All i to iii r/o. Opp. Bagati Hall,
Kanphade Nagar, Nagpur.

3. Manohar s/o Jangluji Dhongle,
Aged about 62 years,
Occupation-Private Work,
(On R.A.)

3 i) Shri Milind Manohar Dhongle,
Aged 38 years.

3 ii) Shri Anil Manohar Dhongle,
Aged 35 years.

3 iii) Shri Amrapal Manohar Dhongle,
Aged 35 years.

3 iv) Smt. Sugandhabai Manohar Dhongle **(Deleted)**

All residents of Shivangaon, Tehsil &
District-Nagpur.

4. Dhanraj s/o Jangluji Dhongle,
Aged about 60 years,
Occupation-Private work (On R.A.)

5. Arun s/o Jangluji Dhongle,
Aged about 50 years,
Occupation-Private work,
(On R.A.)
6. Ashok s/o Jangluji Dhongle,
through L.Rs.
 - 6 i) Shri Nitin s/o Ashok Dhongle,
Aged Major.
 - 6 ii) Shri Vicky s/o Ashok Dhongle,
Aged Major.
 - 6 iii) Ku. Seema d/o Ashok Dhongle,
Aged Major.
 - 6 iv) Ku. Pinky d/o Ashok Dhongle,
Aged Major.

All resident of Shivangaon, District-Nagpur.

7. Dilip s/o Jangluji Dhongle,
Aged about 40 years,
Occupation-Private work
(On R.A.)

All above respondents no.3 to 7 are
R/o. Shivangaon, Tah & Dist. Nagpur.

8. Smt. Bhimabai w/o Tularamji Chahande,
(Dead), through L.Rs.

As per ct's order dated 23.12.10 SA dismissed against R 8 (i) to (v), 9 and 10
--

- 8 i) Shri Rajendra s/o Tularam Chahande,
Aged Major.
- 8 ii) Shri Pramod s/o Tularam Chahande,
Aged Major.

8 iii) Shri Vinod s/o Tularam Chahande,
Aged Major.

8 iv) Ku. Karuna d/o Tularam Chahande,
Aged Major.

8 v) Ku. Laxmi d/o Tularam Chahande,
Aged Major.

All residents of Kamptee, Tehsil-Kamptee,
District-Nagpur.

9. Smt. Ramabai w/o Kawaduji Awale,
Aged about 44 years,
Occupation-Household,
R/o. Juni Mangalwari, Nagpur.
(On R.A.)

10. Diwakar s/o Dhodbaji Patne,
Aged about 50 years,
Occupation-Business,
R/o. Plot No.18, Nehru Nagar,
Nagpur (On R.A.)

11. Harishchandra s/o Sahadeo Pradhan,
Aged about 51 years, Occ. Nil.

12. Prakash s/o Harishchandra Pradhan,
Aged about 54 years, Occ. Nil.

13. Dilip s/o Harishchandra Pradhan,
Aged about 47 years, Occ. Business.

14. Rajeshwar s/o Harishchandra Pradhan,
Aged about 45 years, Occ. Business,
All R/o. Gittikhadan, Nagpur.

.. Intervenors
nos.11 to 14.
.. Respondents

Shri V.S. Kukdey, Advocate for the appellants,
Shri V.M. Nitnaware, Advocate for respondent nos.(ii), (iv), (v)
and (vi),
Shri Amit Choube, Advocate for respondent nos.11 to 14
(Intervenors).

CORAM : SMT. M.S. JAWALKAR, J.
RESERVED ON : 22.02.2022.
PRONOUNCED ON : 01.03.2022.

JUDGMENT

Heard the learned counsel for the appellant. Advocate Shri Amit Choube for intervenor nos.11 to 14. There are written notes of argument on behalf of Legal Representatives of respondent no.1 i.e. (ii), (iv), (v) and (vi) on record.

2. This court, vide order dated 26.3.2010, framed following substantial questions of law :

- (1) Whether the first appellate court has erred in holding that Khasara No.111 of village Isasani was a Kotwali-dunga land and therefore inalienable, particularly when it was the case of the plaintiff that it was the land purchased out of income of Kh.No.8/2 which was Kotwal land.?
- (2) Did the court below fall in error in holding that the suit was not barred by limitation law when the present appellant was added as party to the suit in the year 1999 and written statement was filed by the other defendants in 1994 claiming

that the land has been transferred to the present appellant.?

3. The appellant herein is defendant no.3, who came to be added as defendant by way of amendment.

4. The respondent no.1 herein filed a suit for declaration and perpetual injunction against the appellant and the respondent nos.2 to 10, seeking declaration that sale deed executed by deceased father Shri Jangluji Dhongle on 30.5.1990 in favour of M/s. Harikripa Housing Agency, Nagpur is illegal and has obtained by fraud misrepresentation, vide RCS No.635/1993. The said suit was filed on 23.6.1993. Application for amendment filed on 25.3.1996. The sale deed in favour of present appellant came to be executed on 30.4.1991. The learned trial court decreed the suit and held that the sale deed executed by Late Jangluji Dhongle in favour of defendant nos.1 and 2 i.e. Diwakar s/o Dhondbaji Patne and Arvind s/o Haridas Badiyani dated 30.5.1990 is void, illegal and not binding on the plaintiff, so also sale deed dated 30.4.1991 executed by Diwakar Patne and Arvind Badiyani, partners of M/s. Harikripa Housing Agency in favour of defendant no.3 Sau. Vijaya w/o Diwakar Patne relating to the suit

land Kh.No.111, area 6.28 of mouza Isasani was held illegal, bad-in-law and not binding on the plaintiff. The suit bearing R.C.S. No.635/1993 decreed by the learned trial Court.

5. The defendant no.3 (appellant herein) challenged the said order passed by the Civil Judge, Senior Division, Nagpur before the District Judge, Nagpur in Regular Civil Appeal No.971/2000 mainly on the ground that the suit land was not a Kotwal-Dunga and if it is a Kotwal-Dunga, the learned lower Courts have no jurisdiction to decide the suit and only revenue authority can take a decision. If it is a Kotwal-dunga, then right of legal heirs of late Jangluji Dhongle have been extinguished as soon as Jangluji was removed from the post of Kotwal. No decree can be passed in favour of defendant no.1 i.e. plaintiff, because the land was not belonging to him and he was not a owner or a successor of the said land. The suit is barred by limitation and also not maintainable as per the provisions of Order 2, Rule 2 of the Code of Civil Procedure. As per the provisions of Section 34 of the Specific Relief Act, merely the suit for declaration without any consequential relief is not maintainable. The sale deed was executed in favour of M/s. Harikripa Housing Agency, a partnership concern, but the same was not made a party and

therefore the suit is not maintainable. The learned appellate court, without considering all these issues involved in the matter, dismissed the suit.

6. The learned counsel for the appellant relied on ***Ramalingam Chettiar .vs. P.K. Pattabiraman and another, AIR 2001 SC 1185*** in support of his contention that Section 21 of the Limitation Act, 1963 contemplates two situations one under the substantive provision which provides that where after filing of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been brought on the day when he was added or substituted as a party in the suit. The second situation contemplated under the proviso to the substantive provision is where the court is satisfied that a new plaintiff or defendant was omitted to be added or substituted due to a mistake in good faith, the court may direct that the suit, as regards the newly added or substituted party, shall be deemed to have been instituted on any earlier date.

7. The learned counsel for the appellant also drawn my attention to record and pointed out that there is nothing on record to show that deceased Janglu purchased the suit land Kh. No.111

area 6.28 of mouza Isasani from the agricultural income of Kh.No.8/2 of mouza Shivangaon (which was allged to be granted as Kotwali right) to the father of Jangalu late Bhiwa Janglu and Jangalu inherited the same from his father. It is the case of the plaintiff that Janglu Dhongle was a heavy habitual drunkard and defendants have taken undue advantage and got prepared the false, bogus and illegal documents. The learned counsel pointed out that in view of the pleadings that father of Janglu being the Kotwal allotted with Kotwali land i.e. Kh.No.8/2, then after his removal as a Kotwali, the other heirs would not have any right over the said land. There is nothing on record to show that out of agricultural income of Kh.No.8/2, Janglu purchased Kh.No.111. It is also not established that it is joint family property. In fact, the learned trial court answered these issues in favour of the defendants and in view thereof its findings that the suit property is Kotwal Dungi is totally contrary to what findings are recorded.

8. As against this, the learned counsel for respondent nos.(ii), (iv) (v) and (vi) on record (L.Rs of respondent no.1) submitted written notes of arguments and contended that the record shows that deceased Janglu and his father were Kotwal of village and he was given by government for service rendered by

him as Kotwal under Kotwali Rights. Even today, it is Class-II land and no permission of Collector was obtained before transfer. As the said land Kh. No.111 itself is Kotwal Land, there is no question about its purchase out of agricultural income of Kh.No.8/2. He further submitted that they have placed on record many documents which clearly establishes that the land is Kotwal Land. So far as the delay is concerned, it is contention of the respondent that the sale deed was executed on 30.5.1990, however, plaintiff came to know about the sale deed in March-1993. After getting certified copy, suit came to be filed on 23.6.1993 and the suit was within limitation. So far as the limitation in respect of original defendant no.3 is concerned the suit property was transferred during the pendency of suit which is totally illegal and void and the sale deed which was not binding on the legal representatives of Janglu. On these two counts, he requests for dismissal of appeal.

9. I have heard the learned counsel for appellant and considered written arguments of L.Rs of respondent no.1 i.e. (ii) (iv) (v) and (vi) Perused the record. From the written statement in the Regular Civil Suit No.635/1993, by way of specific pleadings, it was brought to the knowledge of the plaintiff that the

plaintiff had already filed a suit bearing Regular Civil Suit No.7388/1993. In the said suit, defendants filed their reply and it is specifically submitted that the suit land was owned by the father of the plaintiff. He entered into an agreement with defendant no.1 on 7.8.1989 to sell the suit land for a consideration of Rs.3,96,000/-. Thereafter, Janglu executed sale deed of the suit land in favour of M/s. Harikripa Housing Agency to whom plaintiffs have not made a party. The sale deed was executed on 30.5.1990 and possession of the said land was handed over to M/s. Harikripa Housing Agency. Thereafter, M/s. Harikripa Housing Agency sold the suit land to Smt. Vijaya w/o Diwakar Patne (present appellant) and since Smt. Vijaya w/o Diwakar Patne demarcated the land into a layout and sold the plots to various persons, they all are in possession. So, it is clear from this fact that the plaintiff was having knowledge in view of written statement in Regular Civil Suit No.7388/1993 that M/s. Harikripa Housing Agency sold the same plot to Vijaya Patne. The sale deed of Vijaya Patne executed on 30.4.1991, in spite of this knowledge, the application for addition of party i.e. Vijaya Patne filed on 25.3.1996. As such, the suit against the defendant no.3 i.e. the appellant, is barred by limitation, in absence of any specific order

giving effect from the date of filing of the suit.

10. From record, it appears that the said defendant no.3 i.e. the appellant purchased suit land on 30.4.1991. She came to be added vide order dated 25.6.1999, the application for amendment filed on 25.3.1996. As such, appeal is barred by limitation so far as the appellant is concerned. In view of judgment of Hon'ble Apex Court in *Ramalingam Chettiar (supra)* relied on by the appellant, the court after substituting or adding a party in the suit is required to pass a separate/further order that the suit as regards the newly added defendant or plaintiff shall be deemed to have been instituted with effect from the date the suit was laid. In absence of any such order, the impleadment of newly added or substituted party shall take effect from the date of impleadment and not from the date of institution of suit. The period of limitation so far as the newly added or substituted shall run from the date of their impleadment in the suit. I do not find any order having passed under the proviso to Section 21 of the Limitation Act that the impleadment would take effect from the date of institution of the suit. The order passed below application Exh.21 dated 17.01.1997 reads as under :

“It is not resisted by reply. It has not change the nature. The amendment is necessary to adjudicate real dispute. Hence, allowed.

Thus, the suit filed by the respondent was barred by limitation to the extent of present appellant. So far as the suit property is a Kotwal Dungi is concerned, it is the case of the plaintiff that Jangluji expired leaving behind landed property i.e. Kh.No.8/2 mouza Shivangaon and new Kh.No.111 are ancestral properties. It is further contention that Kh.No.8/2 granted as Kotwali Right and Kh.No.111 were purchased from the agricultural income of Kh.No.8/2 of Shivangaon. The learned trial court answered issue nos.1, 3, 4, 5 and 6 as under :

Sr. No. Issues	Findings
1. Does the plaintiff prove that the suit land was purchased out of the income of ancestral coparcenery property by late Jangluji Dhongle as such it is their ancestral coparcenery property.?	No.
3. Does the plaintiff prove that deceased Janglu was addicted of vices of drinking of liquor, consuming ganja and playing satta.?	No.
4. Does the plaintiff prove that deceased Janglu was mentally unsound.?	No.
5. Does the plaintiff prove that there was no legal necessity to sale the suit land.?	No.

6. Does the plaintiff prove that defendant took advantage of habits of late Janglu and got prepared the false bogus and illegal registered sale deed of suit land on 30.5.90 from decease Janglu.? No.

When the land is not kotwali-dungi, then no question arise of obtaining permission of Collector/SDO. Even the plaintiff failed to prove that the suit property is purchased out of agricultural produce from Kh.No.8/2. Though the above referred issues were answered against plaintiff, both the courts below arrived at perverse finding that suit land is kotwal land on the basis of some documents which are not duly established as per provisions of Evidence Act. Both the courts below failed to appreciate this fact and arrived at patently perverse findings which are not sustainable in the eye of law.

11. In view of these findings, there is no question of taking permission of Sub-Divisional Officer in respect of suit property. In view of these findings, the property was self acquired property of Janglu. The learned District Judge also recorded finding that the plaintiff has failed to prove that the suit land was the ancestral property or it was purchased out of agricultural income of Kh.No.8/2 and only on the basis of some documents

like Kistabandi, Bajbul application, arrived at the conclusion that Jangluji and his father were Kotwals and the suit land was granted to deceased Jangluji by the government for the services rendered by him as a Kotwal under kotwali rights. It was not the pleading of the plaintiff that the suit land was of Kotwal Dungi. This contention was that the said suit land Kh.No.111 was purchased out of income from Kh.No.8/2. However, both the courts below held that Kh.No.111 is Kotwali Land given to father of the plaintiff. In fact, in the State Re-organization, Maharashtra State, in the year 1962 (Amended Act) the appointments as a Kotwals were terminated and the service lands given to all the Kotwals were stand cancelled. So far as the documents placed on record does not reflect specifically old Kh.No.35/3 is converted and renumbered as Kh.No.111. The appellate court totally erred in holding that Kh.No.111 of village Isasani was a Kotwali-dunga land and therefore inalienable, particularly it was the case of the plaintiff that it was the land purchased out of income of Kh.No.8/2 which was Kotwal land.

12. There was clear cut admission on the part of the plaintiff that the suit land was purchased by Janglu Dhongle. The documents placed and relied on by the plaintiff were not proved

by examining any concerned authority and learned appellate court as well as trial court, without considering these facts, relied on those documents and arrived at perverse findings. The enquiry into, whether the land in question is Kotwali land or not is within the jurisdiction of revenue authorities and not the civil court. As such, both the courts below recorded perverse findings. Hence, the judgment and decree passed by both the courts are liable to be set aside. The suit, in fact, was barred by limitation against the present appellant. Substantial questions of law are answered accordingly.

13. In this view of the matter, I pass the following order :

O R D E R

(1) Second Appeal is allowed with costs.

(2) The judgment and decree dated 7.7.2000 in Regular Civil Suit No.635/1993 passed by 2nd Joint Civil Judge, Senior Division, Nagpur as well as in a Regular Civil Appeal No.971/2000 dated 30.8.2003 passed by 4th Adhoc Additional District Judge, Nagpur are hereby quashed and set aside.

(3) Regular Civil Suit No.635/1993 is dismissed.

(4) Decree be drawn accordingly.