

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.427 OF 2023
WITH
CIVIL APPLICATION NO.13585 OF 2022
IN
SECOND APPEAL NO.427 OF 2023

1. Aasaram s/o. Balwanta Karande,
Age 63 years, Occu. Agriculture,
R/o. Beedsavangi, Taluka Aashti,
District Beed
2. Sitaram s/o. Balwant Karande,
Age 58 years, Occu. Agriculture,
R/o. Beedsavangi, Taluka Aashti,
District Beed
3. Shivram s/o. Balwant Karande,
Age 54 years, Occu. Agriculture,
R/o. Beedsavangi, Taluka Aashti,
District Beed

.. Applicants
(Original Defendants)

Versus

Bhima s/o. Anna Karande,
Age 71 years, Occu. Agriculture,
R/o. Beedsavangi, Taluka Aashti,
District Beed

.. Respondent
(Original Plaintiff)

Mr. Bhushan B. Kulkarni, Advocate for Appellants
Mr. G. V. Wani, Advocate holding for Mr. D. R. Korade, Advocate for
Respondent

CORAM : S. G. MEHARE, J.

DATE : 03-10-2023

ORAL JUDGMENT:-

1. Heard the learned counsel for the appellants and the
learned counsel for the respondent.

2. The present second appeal has been preferred against two concurrent judgments against the appellants for a decree of possession of the suit land.

3. The learned counsel for the appellants would submit that from 1990, the appellants have possession over the suit land. The suit land is part of the remaining portion of the respondent's land. It is not disputed that out of 4 Acres of the land, the appellant had purchased the suit land by a registered document of sale. However, the description of the suit land in the said registered sale deed does not match the description of the suit land which was in his actual possession. He has vehemently argued that since 1990, the respondent never objected to the possession of the appellants over the suit land as he was well aware that the said land was sold to the plaintiff. The remaining land which was allegedly sold to the appellants, was uncultivable/barren land. In the ordinary course of business, no person would purchase uncultivable land except for non-agricultural use. However, under misbelief, the appellants never objected to the incorrect description mentioned in the sale deed. It is also submitted that one suit for correction of the description of the property sold was filed, but he did not know its fate. He has vehemently argued that the respondent candidly admitted the possession of the appellants over the suit land since 1990. So, the inference drawn by the learned Courts below is illegal that the respondent intended to sell disputed land. The

appellants were poor agriculturists. There was no cause of action to file suit. The cause of action was imaginary and concocted. Hence, the following substantial questions of law are involved in the matter.

- (i) Whether the suit can be maintained on the cause of action pleaded by the plaintiff?
- (ii) Can the decree only be granted on the oral evidence about dispossession?

4. The learned counsel for the respondent/plaintiff has vehemently argued that the plaintiff never intended to sell the suit land to the appellants/defendants. The cause of action has been specifically pleaded in the suit. On the day of the cause of action, one cadastral surveyor was called upon to ascertain the boundaries. The present appellants opposed them, and it was the cause of action. Both Courts have concurrently believed there was a cause of action to file suit, and the suit was well within limitation. The plaintiff was unauthorizedly dispossessed on the date of the cause of action. The defendants failed to prove their title over the suit land. The plaintiff never denied the sale of the part of the same survey number to the defendants/appellants. Gradually, the defendants/present appellants dispossessed the plaintiff from the entire land and started claiming the title on the basis of a so-called sale deed. There are concurrent findings about the cause of action and the description of the property mentioned in the sale deed. In any case, the fact that the suit property was never sold to the

present appellants/defendants by the respondent/plaintiff cannot be changed. They had no document of title other than the sale document. No substantial question of law has been pleaded by the learned counsel for the appellants involved in this appeal. Hence, the appeal deserves to be dismissed.

5. After hearing the learned counsel appearing for the respective parties extensively, there appears a substance in the submission of the learned counsel for the respondent/plaintiff that the sale document of the defendants does not match the description of the suit land. The title of the plaintiff over the suit land was never denied. The cause of action was specifically pleaded, and the evidence was also lead. As far as the oral evidence of the plaintiff about the possession of the defendants is concerned, it may not be used against the documentary evidence; otherwise, that admission is used in the context of the dispossession of the plaintiff from the disputed land.

6. After having gone through the impugned judgments and decrees, the Court believes that there are no substantial questions of law involved in the present appeal. Hence, the appeal stands dismissed at the admission stage. The pending civil application stands disposed of.

**(S. G. MEHARE)
JUDGE**