

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

18 SECOND APPEAL NO.20 OF 1995

WITH CA/600/1995 IN SA/20/1995 WITH CA/12782/2005 IN
SA/20/1995 WITH CA/3435/2003 IN SA/20/1995

Jeelanibegum w/o Sk. Dade,
(Died) through L.Rs.

1. Hajra Begum Sk. Dade,
Age 29 years, Occu. Education,
2. Asiya Begum Sk. Dade,
Age 28 years, Occu. Education,
3. Rizwana Begum Sk. Dade,
Age 27 years, Occu. Household,
4. Rehana Begum Sk. Dade,
Age 25 years, Occu. Education,
5. Sk. Anwar Shakeel Sk. Dade,
Age 24 years, Occu. Business,
6. Shaikh Akhtara Jameel Sk. Dade,
Age 22 years, Occu. Business,
7. Imrana Begum Sk. Dade,
Age 20 years, Occu. Education,

All R/o Srinagar,
Workshop Road, Nanded

... **Appellants**

Versus

1. Mohd. Gous s/o Mohd. Akbar,
Age 78 years, Occu. Pensioner,
R/o Khadakpura, Nanded.
(Died) through L.Rs.
- (i) Shazadibegum w/o Mohd. Gous,
Age 85 years, Occu. H.H.,
R/o Khadakpura, Nanded Textile
Mill's Quarter at and Post – Nanded.

- (ii) Mohd. Yusuf S/o Mohd. Gous,
Age 44 years, Occu. Service in
Nanded Textile Mill, Nanded,
R/o Khadakpura, Nanded Textile
Mill's Quarter at and Post – Nanded.
- (iii) Mohd. Iqbal S/o Mohd. Gous,
Age 40 years, Occu. Service as Teacher,
R/o Old Gunj, at and Post – Nanded.
- (iv) Afsal Begum D/o Mohd. Gous,
Major and married,
R/o Itwara area, at and Post – Nanded.
- (v) Sarwaribegum D/o Mohd. Gous (Died).
- (vi) Akhtar begum D/o Mohd. Gous,
Major and married, R/o Nagpur.
- (vii) Zakia Begum D/o Mohd. Gous,
Major and married, Occu. Household,
R/o Mandai, Nanded.
- 2. Sk. Dade S/o Sk. Vazir,
Age 60 years, Occu. Pensioner,
R/o Nanded.
- 3. Sharifabegum w/o Sk. Ibrahim,
Age 35 years, Occu. Household,
R/o Nanded.
- 4. Shaminabegum D/o Sk. Ibrahim,
Age 16 years, Occu. U/G of her mother
Sharifabegum appellant No.3.
- 5. Mohd. Gous S/o Sk. Ibrahim,
Age 14 years, U/G of appellant No.3.
- 6. Ifrabegum D/o Sk. Ibrahim,
Age 12 years, Minor U/G of appellant No.3.
- 7. Farzanabegum D/o Sk. Ibrahim,
Age 12 years, Occu. Minor U/G of appellant No.3.

8. Md. Iliyas S/o Sk. Ibrahim,
Age 8 years, Minor U/G of appellant No.3.
9. Zarinabegum D/o Sk. Ibrahim,
Age 6 years, Minor U/G of appellant No.3.

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Advocate for Appellants : Mr. P. V. Mandlik (Senior Counsel) i/b
Mr. V. D. Patnoorkar.

Advocate for respective Respondents : Ms. Sushma T. Jadhav
h/f Mr. D. J. Choudhari.

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CORAM : S. G. MEHARE, J.

DATE : 25.10.2023

ORAL JUDGMENT :-

1. Heard the learned counsel for the appellants.
2. The other respondents, who were the defendants, did not appear.
3. The appellant was the defendant whose name the alleged sale deed was executed by fraud. Respondent No.1, who is contesting this appeal, was the plaintiff.
4. The plaintiff has filed a suit for declaration and possession. The suit was decreed, holding that defendant No.3, in collusion with defendant Nos.1 and 2, had played fraud with the plaintiff and illegally transferred the plot in the name of defendant Nos.1 and 2. The defence of the defendants that the

plaintiff had transferred the suit plot to defendant No.1 in 1972 for valuable consideration was not admitted. The Trial Court has also observed that the suit is not hit under Section 163 of the Maharashtra Cooperative Societies Act. The appeal preferred against the judgment and decree of the Trial Court was also dismissed.

5. The second appeal was admitted on the ground of jurisdiction of the Court below.

6. Learned senior counsel Mr. Mandlik for the appellants has vehemently argued that the suit plot was in the name of a registered Cooperative Housing Society. The plaintiff, Mohd. Gous was the original allottee. The suit plot belongs to the society. Hence, it was a dispute covered under Section 91 of the Maharashtra Cooperative Societies Act. The defendants had proved the title over the property in question. He also argued that the plaintiff never entered the witness box. His Power of Attorney examined himself. The suit is barred under Section 163, read with Section 91 of the Maharashtra Cooperative Societies Act.

7. Learned counsel for the respondent/plaintiff submits that the defendants were not a member of the society. They

had claimed their membership on the basis of one letter. The plaintiff has examined the Secretary of the society, and it was proved that the said letter was not issued by the society admitting the defendant as a member. Since the dispute was not between two members of the Cooperative Societies and considering the nature of the dispute, only the Civil Court has jurisdiction. She referred to Section 91 of the Cooperative Societies Act. She relied on the case of *Shriram Dattarao Chaudhari and another Vs. Madhaodas S/o Mohanlal Mundhada ; 2014(7) LJSOFT 129 : 2014(2) MAH.L.J. 448* and *Sharad Keshavrao Kubde and others Vs. Jawahar Cooperative Housing Society Ltd. and others ; 2011(2) LJSOFT 8*.

8. It is not disputed that the suit plot was the property of a Cooperative Housing Society. It is also not disputed that the plaintiff was a member of the society, and the suit plot was allotted to him. He had a title. The defendant, based upon the letter issued by the Secretary of the Society, had claimed the membership. However, they failed to prove the said letter, as the Secretary of the society examined by the plaintiff did not accept the said letter issued by the society.

9. Section 91 of the Cooperative Societies Act defines the disputes. Any dispute touching the constitution, elections of the committee or its members, conduct of general meetings, management or business of society shall be raised before the Cooperative Court. However, for invoking the jurisdiction of the Cooperative Court, both parties to it shall be the society against the members or members against the members of the society. If the dispute is between the members and members of the society, as mentioned above, then the jurisdiction of the Civil Court is ousted. Herein the case, the appellant failed to prove that he was ever a member of the society. Since there was no membership of the appellant, the Civil Court invokes the jurisdiction. The nature of the suit was also specific in that a declaration that the transfer certificate was obtained fraudulently and for possession, which was taken forcefully due to the continuous absence of the plaintiff and their interse relationship.

10. Though the learned counsel for the appellant has raised the objection that the plaintiffs did not enter the witness box, the Power of Attorney was not the competent witness. Hence, the suit was barred. But, it was never raised before the Trial

Court and First Appellate Court. It was also not a substantial question of law while admitting the appeal.

11. The Bombay High Court, in the case of *Shriram (cited supra)* has held that since the land of the society was encroached on by the watchman, the Civil Court invokes the jurisdiction. Relying on the case of ***Margret Almeida Vs. Bombay Catholic Cooperative Housing Society Ltd ; 2012 (5) Mh.L.J. Supreme Court 4.*** It has been held that unless the dispute satisfies the requirement mentioned in Section 91 of the Maharashtra Cooperative Societies Act, the jurisdiction of the Civil Court to entertain and try the suit would not be barred. Similar is the view taken in the case of *Sharad (cited supra)*.

12. The appellant could not satisfy the Court that the requirements mentioned in Section 91 of the Maharashtra Cooperative Societies have existed. The primary requirement of being a society member has not been proved. Therefore, both Courts have correctly held that considering the nature of the dispute, the Civil Court invokes the jurisdiction. Accordingly, the substantial question of law is answered that the Civil Court has the jurisdiction. The substantial question of law formulated

is answered in the facts and circumstances of the case that the Civil Court had jurisdiction to try the issues.

13. For the above reasons, the second appeal stands dismissed.

14. Rule stands discharged. No order as to costs.

15. R and P be returned to the learned Trial Court.

16. Pending civil applications stand disposed of accordingly.

(S. G. MEHARE, J.)

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