

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.214 OF 1991
WITH
CIVIL APPLICATION NO. 500 OF 1993
WITH
CIVIL APPLICATION NO. 2013 OF 2021
WITH
CIVIL APPLICATION NO.3067 OF 1998

- 1) Rangnath Bhakaji (Died)
- 1-A) Sailinath Rangnath Chandude
(Died to L.Rs.)
- 1A-i) Nitin Sailinath Chandude
Age : 8 years, Occ : Education,
(under guardianship)
R/o Old Jalna, Dist. Jalna.
- 1A-ii) Shital Sailinath Chandude
Age : 15 years, Occ : Education,
R/o Old Jalna, Dist. Jalna.
- 2) Narayan S/o Ramchandra Chandude
Died through L.Rs.
- 2-A) Murlidhar Narayan Chandude
Age : 50 years, Occ : Labour,
R/o Old Jalna, Dist. Jalna.
- 2-B) Gangadhar Narayan Chandude
Age : 40 years, Occ : Labour,
R/o Old Jalna, Dist. Jalna.
- 3) Ganpat S/o. Ramchandra Chandude,
Age : 49 years, Occ : and resident
as above.
- 4) Mahadu Bapuji Chandude
(Died) Through L.Rs.
- 4-A) Vithal S/o Mahadu Chandude
Age : 40 years, Occ : Agri.,
R/o Old Jalna, Dist. Jalna.

- 5) Punjaram S/o Naguji
(Died) L.Rs.
- 5A) Rakhmaji Punjaram Ingale
Age : 40 years, Occ : Labour,
R/o Jalna, Dist. Jalna.
- 6) Pandit S/o Nagudi
(Died) Through L.Rs.
- 6-A) Parbhu Pandit Ingle
Age : 35 years, Occ : Labour,
R/o Jalna, Dist. Jalna.
- 7) Eknath Totaram Chandude
(Died) Through L.Rs.
- 7A) Santosh Eknath Chandude
Age : 38 yrs, Occ : Labour,
R/o Shiv Nagar, Jalna.
- 8) Mantabai Narayan
(Died) Through L.Rs.
- 8-A) Sanjay Bhagirath Chandode
Age – 46 years, Occ : Service,
R/o Old Jalna, Tq. & Dist. Jalna.

..APPELLANTS

versus

- 1) Govinda Lahau Awate
(Died) through his L.Rs.
- 1A) Tulshiram Govind Awate
Age : 40 years, Occ : Agril,
R/o Khucharwate, Juna Jalna.
- 1B) Dinaji Govind Awate
Age : 35 years, Occ : Agril,
R/o As above.
- 1C) Gangaram Govind Awate
Age : 30 years, Occ : & R/o as above.
- 1D) Magan Govind Awate
Age : 21 years, Occ : & R/o as above

- 1E) Tulsabai Govind Awate
Age : 65 years, Occ : Household,
R/o As above
(Abated as pr order dated 25.03.2015) .
- 1F) Radhabai Govind Awate
Age : 25 years, Occ : Household,
R/o As above.
- 2) Kisan Sonaji Awate
(Died) through his L.Rs.
- (i) Haribhau Kisan Awate
Age : 38 years, Occ : Legal Practitioner,
R/o Old Jalna, Tq. & Dist. Jalna.
- (ii) Sugandas Kisan Awate
Age : 35 years, Occ : Agri.,
R/o Old Jalna, Dist. Jalna.
- iii) Bhagitrabai Kisan Awate
Age : 30 years, Occ : Household,
R/o As above.
- iv) Ashabai Kisan Awate
Age : 28 years, Occ : &
R/o As above.
- (v) Lahanubai d/o Kisan Awate
Age : 25 years, Occ : & R/o As above
(Abated as per order dated 25.03.2015)
- 3) Asaram Dajiba
(Died) through his L.Rs.
- 3A) Janardhan Asaram Awate
Age : 40 years, Occ : Agri.,
R/o Khucharwata, Old Jalna.
- 3B) Babasaheb Asaram Awate
Age : 35 years, Occ : Agril.,
R/o As above.
- 3C) Babulal Asaram Awate
Age : 22 years, Occ : Agri.,
R/o As above

- 3D) Sitaram Asaram Awate
Age : 30 years, Occ : Household,
R/o As above.
- 3E) Surkmanilal Asaram Awate
Age : 25 years, Occ : Nil.,
R/o As above
- 4) Dagabai Vithoba Awate (Died)
has no legal representatives
so there is no necessary to take
L.Rs. on record.
- 5) Yamunabai Gangaram Awate
she is deceased and she has no L.Rs.
so there is no necessity to take L.Rs.
on record.

..RESPONDENTS

...
Mr.Kshijit Surve h/f Mr.Hemant Surve – Advocate for
appellants
Mr.P.P. Dawalkar – Advocate for respondent

...
CORAM: GAURI GODSE, J.

DATE: 23rd February 2023

ORAL JUDGMENT:

1. This second appeal is preferred by the original plaintiffs for challenging the concurrent judgments and decrees dismissing their suit. The second appeal was admitted by order dated 27th May 1991. The order of admitting the second appeal does not frame any substantial question of law.
2. Appellants had filed Regular Civil Suit No.433 of 1976 in the Court of Civil Judge, Junior Division, Jalna, praying for a declaration that the suit property was allotted to the Dhor

community and hence they are the owners of the suit plot admeasuring 200 feet X 200 feet adjacent to survey no. 486/6 or part thereof, and the same is in their possession. The prayers in the suit are complex in nature, and hence for better understanding, the prayer clauses are reproduced below :

“IT IS THEREFORE PRAYED THAT.

It be declared that the plaintiff as representative of dhoor community of Jalna and the owner of the suit plot measuring 200' X 200' adjacent to the sarve no. 486/6 or part there of and their possession over the same as such he continued after arise setting as the order passed in R.D. No.39/74.

- a- That the suit for declaration of the suit plot 200 x 200 feet adjacent to the survey no. 486/6 or the part there of be decreed and be declared that the plaintiffs are the order passed in R.D. No. 39 of 1974 Govinda and others v/s. Mukinda and others be set aside.
- b- Costs of the suit be awarded to the plaintiffs
- c- any other suitable relief for which the plaintiffs found entitled, be granted.”

3. The plaint describes the suit property as 200 feet x 200 feet situated at survey no. 486 mentioned by

respondents/defendants in their previous suit. Before referring to the pleadings of the present suit, it is necessary to point out the facts with respect to the previous suit. The defendants in the present suit had filed Regular Civil Suit No.167 of 1967 in the Court of Civil Judge, Junior Division at Jalna, against ten defendants for possession of 200 feet x 200 feet area from survey no 486/6. The said suit was filed based on title to the suit land and with a contention that the defendants therein had encroached upon survey no.486/6. Defendants in the said suit had appeared in the said suit and filed a written statement. As recorded in the judgment of Regular Civil Suit No.167 of 1967, the defendants in the said suit had contended that the suit site, i.e. an area of 200 feet x 200 feet, did not form part of survey no.486/6. Though it was contended that the said area did not form part of survey no.486/6, there was no dispute raised to the title and possession of the plaintiffs therein with respect to survey no.486/6. It was contended by the defendants therein that they belong to the Dhor community, and they were carrying on the tanning work near Saraswati Bhuvan School, and the Government had allotted the site to the Dhor community and were asked to shift their business to the said site. Thus, the contention of the defendants therein was with respect to being in possession of the suit land pursuant to

allotment by the State Government.

4. The said suit was decreed by holding that the plaintiffs had proved their title over the suit land and that the defendants therein failed to prove that the area in their possession was outside survey no.486/6. In the said suit, the cadastral surveyor, who had measured the land, was examined, and the trial court, by relying upon the evidence of the cadastral surveyor, had recorded a finding that there was encroachment by the defendants in that suit as claimed by the plaintiffs. Thus, the said suit was decreed by judgment and decree dated 25th June 1974, and the defendants therein were directed to deliver possession of the encroached portion shown in the map at Exhibit-36 by removing the construction.

5. The said decree was put in execution. The present appellants had obstructed the execution; hence the respondents herein had filed proceedings for the removal of the obstruction. The Executing Court had framed point for consideration as follows:-
 “4) The point which arise for my determination is:
 Do the obstructors prove that they are in possession of the disputed site on their own account or on account of some person other than judgment-debtors”

6. Thus, by framing the point for consideration Executing Court decided the said issue and held that there was no documentary evidence produced with respect to any right as claimed by the obstructionists, i.e. present appellants. The Executing Court recorded a finding that the judgment debtors in the execution also raised a similar plea, and after considering the said plea, there was a decree for possession. Thus, for want of any evidence, the said issue was answered in favour of the decree-holder, and the application for removal of obstruction was allowed, and the decree-holders were held entitled to be put in possession by removal of the obstruction.
7. The said order was passed on 30th October 1976, by the learned Civil Judge, Junior Division, Jalna, in Regular Darkhast No.39 of 1974. The said order was not challenged by the present appellants. However, on 7th December 1976, they filed Regular Civil Suit No.433 of 1976 for claiming the protection of their possession as well as seeking a declaration with respect to similar grounds that were decided in the obstructionists proceeding. The respondents appeared in the suit and filed their written statements. It was pleaded by the respondents that they were owners of land survey no.486, and the suit property, i.e. 200 feet x 200 feet out of land survey no.486, was

never allotted by the Government. The respondents further contended that there was already an order passed in the execution proceedings for the removal of the obstruction made by the appellants, and thus order passed for the removal of the obstruction is binding upon the appellants.

8. Respondents further contended that the appellants had no title over the suit property, and hence, there was no question of granting any declaration of ownership in favour of the appellants. The suit was dismissed on 24th January 1980. The appellants thereafter preferred appeal being appeal no. 155 of 1981. The said appeal was allowed, the decree dismissing the suit was set aside, and the case was remanded back for a fresh trial. Thereafter, the appellants filed an application for amending the suit to sue in the representative capacity of the Dhor community. The said application for amendment was allowed, and thus the suit proceeded as the suit filed in a representative capacity.
9. After the remand, issues were framed with respect to the ownership rights of the Dhor community with respect to the suit property. Since there was an alternative plea raised about their adverse possession, there was also an issue framed with respect to whether the appellants had any right acquired by

way of adverse possession. The trial Court had also framed an issue of whether the order passed in Regular Darkhast No.39 of 1974 could be set aside in the present suit.

10. The trial Court, by examining all the documents on record, including the Order passed in Regular Darkhast proceedings, decided all the issues in the negative. The trial Court held that the appellants failed to prove that any part of survey no.486/6 was any time allotted to the Dhor community as claimed by the appellants. Appellants had examined witnesses in support of their submission. There were various admissions given by the witnesses examined by the appellants. The learned trial Court has referred to all the admissions given on behalf of the appellants, which showed that the appellants failed to prove that any part of survey no.486/6 was any time allotted to the Dhor community.
11. With respect to the claim of perfecting title by adverse possession is concerned, the trial Court held that the appellants had not pleaded specific grounds with respect to starting point of the claim of adverse possession. Trial Court has also referred to the admissions given by the witnesses, wherein the claim is that they were in permissive possession for the last 70 years. In fact, the perusal of the plaint showed

that the claim was that they were in peaceful possession for last over eight years. The learned trial Court also referred to the admissions in the oral evidence, which showed that there were different contentions raised on behalf of the appellants of being in possession of the suit property. Learned trial Court thus, by examining documentary as well as oral evidence on record, had come to the conclusion that the appellants failed to prove that any part of survey no.486/6 was any time allotted by the Government to Dhor community as claimed by the appellants.

12. The order in Regular Darkhast for the removal of obstruction was never challenged by the appellants. Hence the trial Court refused to grant any relief with respect to setting aside the order passed in Regular Darkhast. Thus, the RCS No. 433 of 1976 filed by the appellants was dismissed on 29th November, 1985 by the learned IInd Joint Civil Judge Junior Division, Jalna. Hence the appellants preferred Regular Civil Appeal No.1 of 1986 in the Court of District Judge at Jalna.
13. The first appellate Court also framed necessary points for consideration with respect to the claim of the appellants. The first appellate court, by re-examining all the documentary as well as oral evidence, has confirmed the findings recorded by

the trial Court and the learned District Judge, Jalna has dismissed the Regular Civil Appeal No. 1 of 1986 on 26th April, 1991. Hence, the appellants filed present second appeal.

14. Learned counsel appearing for the appellants submitted that there was an admission on behalf of the respondents that the Government had allotted the land to the Dhor community. He, therefore, submitted that the issue as to whether the suit property was a part and parcel of the land that was allotted to the Dhor community was required to be considered. He further submitted that since it was not disputed by the respondents that some land was allotted to the Dhor community, the burden was on the respondents to prove that they were owners with respect to the suit property. He further submitted that the trial Court has erroneously put the burden on the appellants to prove the ownership of the Dhor community on the suit property. He thus submitted that there were no proper issues framed in the suit.
15. It was further submitted on behalf of the appellants that the appellants are in continuous possession of the suit property in view of the allotment to the Dhor community by the Government, and hence the said aspect ought to have been taken into consideration by both the Courts while deciding the

suit, which was filed in a representative capacity.

16. Learned counsel for the respondents submitted that the issue as raised by the present appellants was already raised by the defendants in the suit that was filed by the respondents. After considering the grounds with respect to the allotment of the suit property in favour of the Dhor community, the suit filed by the respondents was decreed by holding that the respondents were owners of the suit property. It was further submitted that the appellants are relatives of the defendants in the suit filed by the respondents, similar grounds were taken, and the decree passed in favour of the respondents was obstructed by the appellants. Learned counsel for the respondents further submitted that the order passed for the removal of obstructions by the present appellants is decided, and the order has attained finality. It was thus submitted that the order passed for the removal of the obstruction is binding on the appellants and that the same cannot be made subject matter of filing the suit. It was submitted that the ownership of survey no.486/6 is not proved by producing any documents on record, and therefore, there was no question of granting any kind of declaration and/or protection of possession as claimed by the appellants.

17. It was further submitted that both the Courts had examined all the documentary as well as oral evidence on record and had rightly dismissed the suit filed by the appellants. It was thus submitted that the second appeal does not raise any substantial question of law and hence, is liable to be dismissed.
18. I have considered submissions made on behalf of the parties. I have perused the record of the second appeal as well as the order passed in Regular Darkhast No.39 of 1974. The judgment and decree passed in favour of the plaintiffs in Regular Civil Suit No.167 of 1961 clearly showed that the title of the respondents over the land survey no.486/6 was admitted by the defendants in the said suit. The decree passed in the suit filed by the respondents is after examining the evidence on record, which was produced by the respondents, which included the measurement plan as well as oral evidence of cadastral surveyor as well as panchanama, which showed that construction by the defendants in that suit formed a part of survey no.486/6. A perusal of the judgment also showed that there was no dispute raised with respect to the title of the respondents over the suit property, i.e. survey no.486/6. A perusal of the order of removal of obstructions by the appellants showed that there was no documentary evidence

produced by the appellants showing any right as claimed by them, and hence the order was passed for the removal of obstruction made by the present appellants. It is not in dispute that the said order passed in the execution proceeding was never challenged by the appellants.

19. Though there was an issue framed with respect to whether the order passed in Regular Darkhast No.39/1974 was liable to be set aside, a perusal of the plaint does not show that there was any specific ground raised with respect to setting aside the order passed in Regular Darkhast. Even otherwise, nothing is shown to me in support of the prayer made with respect to setting aside the order passed in Regular Darkhast. It cannot be disputed that the order that was passed in Regular Darkhast for the removal of obstruction was an appealable order, however, admittedly there was no such appeal filed for challenging the order of removal of the obstruction.
20. A perusal of the record shows that even in the present proceedings, no oral as well as documentary evidence was produced on record either claiming ownership over the suit property and/or claiming alternative relief of perfecting of title by adverse possession.
21. Perusal of the judgments passed by both Courts does not

show that there is any perversity or illegality in the reasoning given by both Courts. Submissions made on behalf of the appellants are purely based on facts, and reassessment of evidence on record is not permissible under Section 100 of the Code of Civil Procedure 1908. The Second Appeal does not raise any substantial question of law. Hence the second appeal is dismissed for the reasons stated herein above.

22. In view of the dismissal of the second appeal, pending civil applications do not survive, and the same are dismissed as infructuous.
23. At this stage, learned counsel for the appellants requested to extend the interim order dated 12th October 1996 passed in Civil Application No.1832 of 1991 along with Civil Application No.4295 of 1991 for a reasonable time. By the said order, the execution proceedings were stayed and possession of the appellants was protected till date. Considering the peculiar facts and circumstances of the case, the said order of stay is continued for a period of eight weeks from today.

[GAURI GODSE, J.]