

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

SECOND APPEAL NO.431 OF 2013

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| 1. | Kanba s/o Sambhaji Shinde | | |
| 2. | Marotrao allies Sunil s/o Kanbarao Shinde | ..Appellants | |
| | Versus | | |
| 1. | Takhtamal s/o Misarilalji Shrisrimal | | |
| 2. | Sou. Pushpa w/o Takhtamal Shrisrimal | | |
| 3. | Rajwardhan s/o Takhtamal Shrisrimal | | |
| 4. | Sou. Sushilabai w/o Kanbarao Shinde | | |
| 5. | Maroti s/o Ganpat Harale | | |
| 6. | Kanba s/o Ranba Kudale | | |
| 7. | Sanjay s/o Narayan Shinde | ..Respondents | |

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Advocate for Appellants : Mr. Bangar Nilkanth P.

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CORAM : S.G. MEHARE, J.

DATED : OCTOBER 12, 2023

ORDER :-

1. Heard learned counsel for the appellants.
2. The respondents/plaintiffs had filed the suit for a perpetual injunction in respect of the agricultural field Gat No.134 situated at Pangari, Taluka Kinwat, District Nanded. The plaintiffs had a case that they had purchased the suit land from defendant no. 3 Marotrao by registered sale deed dated 14.05.1998. From the date of execution of the sale deed, the plaintiffs were in possession of the suit

land. The mutation entries were also taken in the Revenue record. On 01.11.2000, when plaintiff no.1 went to the field, he saw that the defendants entered unlawfully into the suit land and threatened their life. Hence, they had filed a suit for perpetual injunction.

3. Defendant No. 1 had admitted the execution of the sale deed but denied that it was a real sale transaction. They had come with a case of hand loan. At the time of the execution of the sale deed, defendant no.3 was minor. Defendant no.3 had filed a counterclaim contending that it was a colourable document. They have repaid the loan raised from the plaintiffs; hence, the said sale deed has lost its efficacy. Defendant no.3 had sought the declaration that the sale deed was inoperative, and mutation entries nos.388 and 390 were also ineffective.

4. The learned trial Court held that the plaintiffs were in possession of the suit land on the cause of action and granted them the injunction. The counterclaim of defendant No. 3 was dismissed. The appeal was preferred against the Judgment and decree of the Civil Judge, Junior Division, Kinwat. The learned District Judge-2, Nanded, has also dismissed the appeal, and now the original defendants are before this Court. Admittedly, no appeal was preferred against the dismissal of the counterclaim of defendant No.3

5. Learned counsel for the appellants submits that the recitals in the sale deed do not prove the possession. It was a nominal

document never intended to be acted upon. Another question that may be involved in this case is that the Court has given a finding about the actual possession of the suit land. Though the appeal was not preferred against the dismissal of the counterclaim, the points for consideration were raised that both Courts below have erred in law by not deciding the counterclaim of original defendant no.3 when Order 8 Rule 6-A mandates registration of counterclaim as a separate suit.

6. The document relied upon by the learned counsel for the appellants revolves around the recitals of the sale deed wherein, admittedly, it has been mentioned that the possession of the suit lands was handed over to the plaintiffs. A specific issue was framed by the trial Court, putting the burden on the plaintiffs to prove that they were in possession of the suit land. Besides the recitals of the possession in the sale deed, the 7/12 extracts were also produced before the Court. Appreciating the evidence, the trial and first appellate Courts have held that the plaintiffs were in possession of the suit land.

7. The entry 7/12 extract has a presumptive value and supports the case of the person that he possesses the agricultural land. Therefore, this Court does not find any force in the arguments of the learned counsel for the appellants that the suit has been decided only on the basis of recitals in the sale deeds. The specific issue was

framed, and findings were recorded. Therefore, it cannot be said that the Court has passed the judgment and decree without reason.

8. As far as the legality and validity of the sale deed executed by defendant no.3 on the basis of his minority is concerned, both Courts have considered the fact and also had framed the issue, putting the burden on defendant no.3. The Courts have evaluated the evidence and arrived at a conclusion that defendant no.3 failed to prove that the sale deeds bearing nos.890, 891 and 892 dated 14.05.1998 were colourable documents. It is not the case that the counterclaim of the present appellants was not considered. When a counterclaim is filed in a suit, a separate number is not given to it. However, the counterclaim is as good as the suit. Therefore, there appears to be no force in the submission of the learned counsel for the appellants that the Courts below have erred in law by not deciding the counterclaim filed by the original defendants.

9. Hearing the learned counsel for the appellants, the Court is not satisfied that any substantial question of law has been involved in this appeal. Hence, the appeal stands dismissed at the admission stage.

(S.G. MEHARE, J.)