

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

**909 SECOND APPEAL NO.259 OF 2023
WITH
CA/6246/2023 IN SA/259/2023**

**JEEVAN ZATINGRAO DABHADE
VERSUS
SANGITA TRIMBAK DABHADE AND OTHERS**

...
Advocate for Appellant: Mr. Gopal D. Kale
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CORAM: ARUN R. PEDNEKER, J.

DATE: 13th JUNE, 2023

ORDER:

1. Heard Mr. Gopal D. Kale, learned counsel for the appellant.

2. By the present Second Appeal the appellant is challenging Judgment passed by the appellate court, whereby it has confirmed the order passed by the trial court dismissing the suit for declaration and perpetual injunction of the plaintiff / appellant.

3. The case of the plaintiff / appellant in brief is that he has filed a suit for declaration of ownership and perpetual injunction in respect

of land gut no.43 admeasuring 81 Are situated at village Dawangaon, Taluka – Udgir, District – Latur against the defendants. It is the case of the plaintiff / appellant that the plaintiff / appellant and his brother Trimbak jointly purchased the suit property i.e. land gut no.43 admeasuring 81 Are by a registered sale deed bearing sale deed no.877/1989 on 30.03.1989. The purchase was made in the name of Trimbak, however the consideration for sale was contributed by the plaintiff / appellant towards sale deed. The property was entered in the name of wife of Trimbak - defendant no.1. On 10.01.2005, Trimbak executed an agreement on stamp paper of Rs.100/- purchased on 04.12.2004 and allotted the suit property in favour of the plaintiff / appellant. It is further the case of the plaintiff that he has been in possession of the suit property as an owner of the suit property and that the defendants do not have any concern with the suit property. It is further the case of the plaintiff that defendant no.3 / son of defendant no.1 took

advantage of the entries in the name of his father in the revenue record and made an attempt to mutate their names in the revenue record. Further on 01.08.2009, the defendants denied title of the plaintiff and obstructed his possession over the suit property and, therefore, he filed a suit for declaration of ownership and perpetual injunction. The suit was contested by the defendants no.1 and 2 by filing their written statement. The trial court framed issues as under:-

Sr. No.	<u>Issues</u>	<u>Findings</u>
1.	Whether the plaintiff proves that, he is owner and in possession of the suit land Gat No.43, as pleaded?	.. In the negative
2.	Whether the plaintiff proves that he has purchased suit land by using own funds in terms of said executed registered sale-deed in the name of the late Trimbak?	.. In the negative
3.	Whether the plaintiff proves that, late Trimbak executed stamp paper dt. 04-12-2004, if yes what will be impact of it?	.. In the negative
4.	Whether the plaintiff proves alleged obstruction or interference by defendants in his possession over the suit land?	.. In the negative

5.	Is the suit claim properly valued and requisite court fees paid thereon?	.. In the negative
6.	Is the plaintiff entitled for a decree of declaration of ownership and permanent injunction?	.. In the negative
7.	What order?	.. Suit is dismissed with cost

4. The trial court after examination of the evidence on record held that the plaintiff / appellant has failed to produce the original sale deed and the plaintiff had filed certified copy of the sale deed on record and, thus, the plaintiff / appellant has failed to explain as to, why he is unable to produce the original sale deed on record and that the plaintiff / appellant has also failed to bring on record the source of money, which he has already paid for purchase of the suit property. The trial court also held that the sale deed was executed on 30.03.1989, and the suit is filed on 26.08.2009, and there is no explanation offered by the plaintiff / appellant.

5. The trial court further held that the 7/12 extract shows that the deceased Trimbak is recorded as the owner and possessor of the suit property. The plaintiff / appellant has not initiated any action against Trimbak during his lifetime and did not claim his ownership and possession over the suit property. The plaintiff / appellant has filed the suit after death of Trimbak and all these circumstances shows that the plaintiff / appellant has no proof of title and possession over the suit property. The trial court further held that agreement dated 04.12.2004, allegedly on stamp paper of Rs.100/- is not produced and further such an agreement also cannot create title in favour of the plaintiff. The plaintiff / appellant having failed to prove his title and possession over the suit property, the suit was dismissed.

6. The plaintiff / appellant filed an appeal before the appellate court. The appellate court formulated the following points for determination of the suit property:-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiff proved that he is exclusive owner and in possession of the suit land Gat No.43, as pleaded?	No
2)	Whether the plaintiff proved that he has exclusively purchased suit land by using own funds in terms of said executed registered sale-deed in the name of late Trimbak?	No
3)	Whether the plaintiff acquired exclusive title to the suit property as Trimbak executed stamp paper dated 04.12.2004, if yes what will be impact of it?	No
4)	Whether the plaintiff proves alleged obstruction or interference by defendants in his possession over the suit land ?	No
5)	Is the suit claim properly valued and requisite court fees paid thereon ?	No
6)	Is the plaintiff entitled for a decree of declaration of ownership and permanent injunction ?	No
7)	Whether interference is called for in the impugned judgment?	No

8)	What order	The appeal is dismissed as per final order.
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7. The appellate court on consideration of the evidence on record held that there is no evidence on record that the plaintiff has paid the sale consideration out of his own income. The plaintiff / appellant has also failed to prove that the suit property was joint family property and purchased by one coparcener in the name of another coparcener. The appellate court also disbelieve the document / alleged agreement on 10.01.2005 admitting the title of the plaintiff / appellant by the defendants. The document was produced in appeal. The appellate court held that such a document is not a registered document and there can be no transfer of title by such a document. It is also not a partition deed and, thus, the plaintiff / appellant cannot acquire it's title through the document. The plaintiff / appellant having failed to prove his possession and title over the suit property the suit for

declaration and injunction was refused and the trial court's order was confirmed.

8. The Second Appeal is filed challenging the Judgment of the appellate court.

9. Mr. Gopal D. Kale, learned counsel appearing for the plaintiff / appellant submits that both the court's below have erred in appreciating that this is a property purchased jointly in the name of Trimbak and that during his lifetime there is a document executed admitting the title of the plaintiff / appellant and the possession of the plaintiff of the suit property. The suit property was the joint family property and the partition having occurred by the admission in the document dated 10.01.2005, the courts have erred in appreciating the pleadings and the evidence on record and, thus, a substantial question of law arises in the Second Appeal for consideration.

10. Mr. Gopal D. Kale, learned counsel for the plaintiff / appellant has tendered the plaint across the bar and on examination of the plaint it is apparent that the case of the plaintiff / appellant is that the plaintiff and his brother Trimbak has jointly purchased the property in the name of Trimbak and the entire consideration was paid by the plaintiff and that on the document dated 10.01.2005, Trimbak in his lifetime accepted the claim of the plaintiff / appellant as the owner of the property. The plaintiff has pleaded that he is in possession of the suit property. From the pleadings of the plaintiff and the arguments it appears that the plaintiff / appellant was not able to purchase the property in his own name and, as such, he has purchased the same in the name of his brother as the plaintiff was working as a Talathi in a Government office.

11. Both the courts below have examined these aspects and held that the plaintiff has failed to prove that –

[i] he has contributed in any manner towards the purchase of the suit property. Trimbak is recorded as owner of the property in the revenue entries,

[ii] the plaintiff has also failed to prove his possession over the suit property,

[iii] the document dated 10.01.2005 is also not proved before the courts.

In such a situation, the appellate court has completely disbelieved the case of the plaintiff / appellant that there is a joint ownership over the suit property. On the findings recorded the substantial question of law does not arise for consideration. The plaintiff / appellant having failed to prove that he has in any manner contributed to the purchase of the suit property and that he is in possession of the suit property, the substantial question of law as raised by the appellant herein does not arise for consideration. The findings are contra to the question raised and the findings are not perverse as they are based on evidence on record.

12. In view of the same, the Second Appeal is dismissed in limine, as no substantial question of law arises for consideration in the Second Appeal.

13. In view of dismissal of the Second Appeal, the pending civil application is also disposed of.

[ARUN R. PEDNEKER, J.]

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