

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

APPEAL FROM ORDER NO.8 OF 2017
WITH CA/2205/2016 IN AO/8/2017
WITH CA/15106/2015 IN AO/8/2017

Tukaram s/o. Nivrutti Garad,
Age : 30 Years, Occ. Agriculture,
R/o. Ambulga, Tq. Chakur,
District Latur

.. Appellant
(Original Plaintiff)

VERSUS

1. Shankar Dnyanoba Ingole,
Age : 53 Years Occ. Agriculture,
 2. Parvatibai W/o Shankar Ingole,
Age : 43 Years, Occ. Household, (Orig. Def. No.6 & 12)
- Both R/o. Ambulga, Tq. Chakur,
At present R/o. Behind S.T. Stand,
Latur, Dist. Latur
3. Shivaji S/o Nivarti Garad,
Age : 40 Years, Occ. Agriculture,
R/o. Ambulga, Tq. Chakur, Dist. Latur.
 4. Dnyanoba S/o Nivarti Garad,
Age : 33 Years, Occ. Agriculture,
R/o. Ambulga, Tq. Chakur, Dist. Latur
 5. Sajiabai S/o Nivarti Garad,
Age : 68 Years, Occ. Agriclture,
R/o. Ambulga Tq. Chakur, Dist. Latur
 6. Bhagirtibai S/o Pandurang Adhav,
Age : 39 Years, Occ. Household,
R/o. Mandavi Tq. Ahmedpur
 7. Rama S/o Gunda Malkapure,
Age : 57 Years, Occ. Agriculture,
R/o. Ambulga Tq. Chakur Dist. Latur

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| 8. | Ramdas S/o Nirutti Adhav,
Age : 38 Years, Occ. Agriculture,
R/o. Ambulga, Tq. Chakur, Dist.Latur | Respondent No.8
is deleted as per
order 17.8.2023. |
| 9. | Madhukar S/o Vitthalrao Shinde,
Age : 40 Years, Occ. Agriculture,
R/o. Murambi Tq. Chakur | |
| 10. | Antaram S/o Rajaram Telang,
Age : 48 Years, Occ. Agriclture,
R/o. Chakur Tq. Chakur, Dist. Latur | ..Respondents |

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Advocate for Appellant : Mr. Patil Indrale Anand V.

Advocate for respondent Nos. 1 and 2 : Rajiv B Deshmukh

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CORAM : S. G. MEHARE, J.

DATE : 14.09.2023

PER COURT :

1. Heard the learned counsel for the appellant and learned counsel for respondent No.1 and 2.
2. The facts giving rise to this appeal from order were that one Tukaram Garad has filed a suit for partition and separate possession of the immovable properties. The present respondent Nos. 1 and 2 were defendant Nos. 6 and 12 in the original suit. Respondent No.6 has purchased the land arising out of the suit land from defendant No.3, measuring 2 Acres 1 Guntha from gat No.2 by way of registered sale-deed. However, the partition suit proceeded ex-parte against the

original defendant Nos.6 and 12 i.e. present respondent Nos. 1 and 2. They had applied for setting-aside the ex-parte order which was allowed but they failed to deposit the cost, hence, the suit proceeded against them. In the said suit, the plaintiff had claimed 6/25th share in the suit property described in plaint paragraph No.4 including the field purchased by respondent Nos.1 and 2. A specific issue No.2 was framed, which reads thus :-

Does the plaintiff prove that all sale deeds described in para No.5 of his plaint are null and void and not binding on his share?

3. The facts of the case reveal that the plaintiff Tukaram never denied the share of Sajabai who subsequently transferred her share to defendant No.6 and then defendant No.6 transferred it to defendant No.12. The suit was decreed declaring that the plaintiff was entitled to 6/25th share in the suit property including the predecessor-in-title of respondent Nos.1 and 2.

4. The present respondent Nos.1 and 2 had preferred regular civil appeal before the learned District Judge-1, Latur. The learned District Judge was pleased to allow Regular Civil Appeal No. 47 of 2008 by judgment and order dated 05.01.2015, setting-aside the impugned judgment and decree, subject to costs of Rs.5,000/- and granted opportunity to present respondent Nos. 1 and 2 to file their written

statement and decide the suit afresh by giving opportunity to the plaintiff/appellant to lead evidence.

5. The original plaintiff has impugned the order of the learned District Judge-1 described above.

6. The learned counsel for the appellant would submit that the impugned order is liable to be set-aside as there were no reasons assigned. During the course of deliberation on the facts, the learned counsel for the appellant would submit that the appellant got his 6/25th share i.e. 1 Acre 88 R. land from Gut No.2 in the execution proceedings. The decree has been satisfied. He has placed the relevant documents on record.

7. The learned counsel for contesting respondent Nos. 1 and 2 had an apprehension that their rights may be affected. He has argued that they were *bona fide* purchaser, therefore, they are insisting for dismissal of the appeal and seeking opportunity to contest the suit on merit.

8. It was a partition suit. When defendant No.6 purchased the land from defendant No.3, admittedly there was no partition, hence, the entire properties were brought to the hotchpotch. The plaintiff never claimed cancellation of the sale deed of the contesting respondents

Nos. 1 and 2. The suit was only for declaration that those sale deeds would not be binding on his share. The sale deeds in favour of present respondents Nos. 1 and 2 are still intact. They are in possession of the their land. Original vendor/defendant No.3 in the original suit never impugned the validity and legality of their sale deeds. There was a huge property from which the plaintiff had already received 6/25th share without touching the field purchased by these respondents which came to the share of original defendant No.3. The decree does not disturb the sale deeds nor their possession. Even the plaintiff has also satisfied the decree on getting his share as per the decree from Gat No.2. The plaintiff/appellant also contended that he has not claimed any right over the property purchased by respondents Nos. 1 and 2 from the original vendor/defendant No.3.

9. Considering the nature of decree passed, and the satisfaction of the plaintiff, it appears that the right conferred upon respondents Nos. 1 and 2 in view of original sale deeds executed by the original defendant No.3 who had admittedly the share in the joint property has not been disturbed. Even if, in such situation, the matter is remanded back, no purpose would be served. The sale deeds in favour of present respondent Nos. 1 and 2 are still intact and not disturbed. At the cost of repetition, it is mentioned here that whatever the property

purchased by respondents Nos.1 and 2 from the original defendant No.3 has not been disturbed. They are still owners of the said property. The litigation would be formality without any outcome. The learned counsel for the appellant also stated that the plaintiff/appellant has satisfied the decree and got independent share. Hence, he has no grievance against respondents/defendant Nos. 6 and 12 and property which they have purchased. The counsel for the respondents nos. 6 and 12 states that they are also not interested to defend the suit, as their interest has not been disturbed by the impugned Judgment and Decree and the decree holder has no interest in the property they had purchased. The appeal may formally be allowed and the matter may be closed.

10. In view of the aforesaid facts, the Court is of the view that reopening the the litigation would serve no purpose as the right of these respondent Nos.1 and 2 is not disturbed by the decree impugned. The impugned order is without any reason, hence, set-aside. Hence, the following order :-

ORDER

- (I) The appeal is allowed.
- (II) The impugned order is set-aside and the suit stands closed against the decree holder reserving the rights of the

respondents nos 6 and 12 to defend if any other party claims a right over the piece of land they had purchased.

- (iii) Record and proceeding returned to the learned Civil Judge, Junior Division, Chakur, District Latur.
- (iv) All pending civil applications are disposed off.

(S. G. MEHARE)
JUDGE

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