

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

**925 SECOND APPEAL NO.286 OF 2019
WITH
CA/4012/2018 IN SA/286/2019**

1. Smt. Jamunabaii Rohidas Patole,
Age: 65 years, Occu.: Agri.,
R/o.: Lohgaon, Tq.: Newasa,
Dist.: Ahmednagar
2. Uttam Rohidas Patole,
Age: 55 years, Occu.: Agri.,
R/o.: Garware Chowk, MIDC,
Chetna Colony, Laxmipark,
Ahmednagar
3. Popat Rohidas Patole,
Age: 48 years, Occu.: Agri.,
R/o.: Lohgaon, Tq.: Newasa,
Dist.: Ahmednagar
4. Raju Rohidas Patole,
Age: 43 years, Occu. Agri.,
R/o. Garware Chowk, MIDC,
Cehtna Colony, Laxmipark,
Ahmednagar
5. Ramesh Rohidas Patole,
Age: 48 years, Occu.: Agri.,
R/o.: Lohgaon, Tq.: Newasa,
Dist.: Ahmednagar
6. Aashabai Gunwant Gaikwad,
Age: 48 years, Occu.: Household,
R/o.: Sent Mery School, Sangamner,
Tq.: Sangamner, Dist.: Ahmednagar
7. Sindhubai Khemraj Gaikwad,
Age: 43 years, Occu.: Household,
R/o.: Sidhi Colony, Indira Gate,
Kalyan

8. Tarabai Ashok Gaikwad,
Age: 38 years, Occu.: Household,
R/o.: Bibwewadi, Upper Indira Nagar,
Pune .. Appellants
(orig. Defendants)

Versus

1. Smt. Shila John Patole,
Age: 58 years, Occu.: Household & Agri.,
2. Diwakar John Patole,
Age: 22 years, Occu.: Agri.,
3. Ratnakar John Patole, *[Abated]*
Age: 18 years, Occu.: Education
4. Kamlakar John Patole,
Age: 16 years, Occu.: Education

Respondent No.4 is minor u/g. Of
Respondent No.1 Shila John Patole,

Through their G.P.A. Holder,
Augustin Mohan Patole,
Age: 56 years, Occu.: Service,
R/o.: Lohgaon, Tq.: Newasa,
Dist.: Ahmednagar

.. Respondents
(Orig. Plaintiffs)

...

Advocate for Appellants: Mr. D. G. Nagode
Advocate for Respondents No.1, 2 & 4:
Mr. R. R. Karpe

...

CORAM: ARUN R. PEDNEKER, J.

DATE: 13th JULY, 2023

PER COURT:

1. Heard.

2. The suit is filed by the plaintiffs for the declaration to the effect that the decree passed in RCS No.28 of 1990 is not binding upon the plaintiffs and for relief of cancellation of mutation entry no.2195 and for the relief of mandatory injunction of recording their names in revenue record in respect of the suit property. The trial court on consideration of the material passed the order of declaration that the decree passed in RCS No.28 of 1990 is not binding on the plaintiffs. It has further directed that the mutation entry no.2195, which was affected on the basis of decree passed in RCS No.28 of 1990, be cancelled. The trial court further directed that the names of the plaintiffs be recorded in the record of rights and in respect of western portion out of block no.189 admeasuring 66 Are being the legal heirs of late John Rmbhau Patole and the decree was drawn accordingly.

3. The judgment and order passed by the trial court was challenged by the appellants before the appellate court in Regular Civil Appeal

No.93 of 2014. The appellate court on consideration of the material held that the judgment and decree passed in Regular Civil Suit No.28 of 1990 is not binding on the plaintiffs as neither John the predecessor in title of the plaintiffs nor the plaintiffs who are the legal heirs of John are parties to the said suit. To make decree binding on the plaintiffs either the plaintiffs must be party to the Regular Civil Suit No.28 of 1990 or that they must be claiming through the parties to that suit. The judgment and decree referred in Regular Civil Suit No.28 of 1990 indicates that above requirements were missing and, thus, the appellate court confirmed the finding of the trial court that the decree passed in Regular Civil Suit No.28 of 1990 is not binding on the plaintiffs.

4. The appellate court has held if the revenue entries are not properly taken, the civil court should ignore the same. Once there is a declaration granted that the decree in Regular Civil Suit No.28 of 1990 is not binding on the

plaintiffs then it is for the plaintiffs to get the mutation entry substituted on the basis of that decree. Once declaration that the decree in Regular Civil Suit No.28 of 1990 is not binding on the plaintiffs is granted, mutation entry no.2195 can be easily substituted by making appropriate application before revenue authorities. The findings of the civil court are binding on the revenue authorities and the revenue authorities would be bound to implement the order of the civil court. In view of the same, the appeal filed by the appellants herein was dismissed.

5. In the present second appeal, the learned counsel for the appellants submits that the prayer for declaration is barred by limitation; as the decree is of the year 1990 and that the suit is filed in the year 2004, that the decree is not binding on the plaintiffs. The plaintiffs are not parties to the earlier suit, as such, it is merely a declaration of law that it is not binding. The plaintiffs have filed the suit after the decree

was used by the defendants to mutate the names of the defendants in the revenue record, which prejudicially affected the right of the plaintiffs in the suit land, although the decree was not against the plaintiffs. The decree passed in the suit is only binding upon the parties to the suit or any person claiming through them, as such, it cannot be said that the limitation for filing suit for declaring that the decree is not binding upon the plaintiffs would commence from the date of the decree. When the plaintiffs are not parties to the earlier proceedings, the plaintiffs can seek declaration that the decree is not binding upon them any time when the decree is used to prejudicial interest of the plaintiffs and the cause of action for such declaration would be the use of the decree to the prejudice of the plaintiffs.

6. The second submission made by the learned counsel for the appellants is that there is no plea of possession in the suit. However, there is no relief granted of possession in the suit. In

view of the same, the submission raised also does not arise for consideration. In view of the same, the question of law raised also does not arise for consideration.

7. Since, both these questions of law raised do not arise for consideration, the second appeal is dismissed. Pending civil application is also disposed of.

[ARUN R. PEDNEKER, J.]

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