



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.129 OF 2024
WITH
CIVIL APPLICATION NO.5893 OF 2024
IN
SECOND APPEAL NO.129 OF 2024**

1. Ashok Sudharshan Giri
Age: 74 years, Occu: Agriculture
2. Sunil Sudharshan Giri
Age: 64 years, Occu: Agriculture
3. Kusumbai Sudharshan Giri
Age: 87 years, Occu: Household
4. Shobha Anil Giri
Age: 57 years, Occu: Household
All R/o. Kasarkheda, Tal. & Dist. Latur. ..Appellants
(Orig. Defendants)

Versus

1. Rajeshwar Shamrao Shinde
Age: 48 years, Occu: Agril,
2. Ram Prabhu Gunda Gadage
Age: 48 years, Occu: Agril
Both R/o: Kasarkheda, Taluka,
Dist. Latur ..Respondents
(Original Plaintiffs)

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Mr. P. R. Katneshwarkar, Senior Advocate i/by Mr. Anuj Ajay Fulfagar, Advocate for the Appellants.

Mr. Mukul Kulkarni h/f Mr. G. V. Mohekar, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 21st NOVEMBER, 2024.**

ORDER:-

1. The appellants/original defendants, impugns judgment and decree dated 10.05.2024 passed by Principal District Judge, Latur in Regular Civil Appeal No.65/2017, thereby reversing judgment

and decree dated 30.03.2017 passed by 5th Joint Civil Judge, Senior Division, Latur passed in Regular Civil Suit No.320/2013. (Hereinafter, parties are referred as per their original status for the purpose of convenience and brevity).

2. The appellants are original defendants in Regular Civil Suit No.320/2013. The suit has been instituted by respondents seeking relief of declaration of ownership and perpetual injunction in respect of land admeasuring 20R out of Gut No.132 situated at Kasarkheda, Tal. Latur. Plaintiffs claims title over suit property on the basis of sale deed dated 30.08.2012 executed by vendors namely Bhagyashree Devendra Puri and Jaishree Mahesh Vibhute.

3. It is plaintiffs claims that they are in enjoyment and possession of the suit land. However, defendants / adjoining land holders started obstruction and interference in their possession without right.

4. The defendants refuted plaintiffs' claim contending that vendors of plaintiffs had no title over suit property nor were they in possession of the land. Defendants' father had maintained illicit relationship with one Amirabee. The vendors of plaintiffs i.e. Bhagyashree and Jaishree are born out of such relationship. They had filed Regular Civil Suit No.241/2005 seeking partition and

separate possession in respect of land in Gut No.132. The said suit was decreed. However, Appeal is still pending. The defendants further contend that they have filed Regular Civil Suit No.575/2012 seeking declaration that sale deed dated 10.06.1998 executed by their father (Sudharshan) in favour of Amirabee @ Meerabai is null and void and also sought decree of perpetual injunction against plaintiffs and their vendors.

5. On the basis of rival claims put forth by parties, trial Court framed issues, recorded evidence and finally dismissed suit holding that plaintiffs failed to prove ownership over the suit land and they are not entitled for recovery of possession. However, in Appeal filed by the plaintiffs, Appellate Court upheld the title of plaintiffs on the basis of registered sale deed dated 30.08.2012 and granted decree for declaration of ownership of 20R land from Gut No.132, so also directed defendants to deliver possession to the plaintiffs within one month.

6. Mr. Katneshwarkar, learned Senior Advocate appearing for the appellants contends that validity of plaintiffs sale deed dated 30.08.2012 is subject matter of Regular Civil Suit No.575/2012 instituted by the appellants. Similarly, the vendors of plaintiffs had instituted Regular Civil Suit No.241/2005 seeking partition and separate possession against defendants. The said proceeding

is also pending for consideration at appellate stage. Unless issue of title of plaintiffs' vendors is adjudicated, no decree for declaration of ownership and delivery of possession could have been passed by the Appellate Court. He would further submit that Civil Appeal Nos.178/2011 and 180/2011 arising out of Regular Civil Suit No.241/2005 were pending before First Appellate Court and now same is subject matter of Second Appeal No.632/2018 before this Court. Consequently, issue of title of vendors of plaintiffs is subjudice, hence, no definite conclusion regarding ownership of plaintiffs can be drawn at this stage. Mr. Katneshwarkar would also submit that since vendors of plaintiffs have instituted suit for partition and separate possession, they cannot dispute that Sudharshan was not holding absolute title in respect of suit property which is ancestral in nature. Hence he was not competent to transfer definite share by any instrument to Amirbee. According to Mr. Katneshwarkar, all these aspects have been ignored by First Appellate Court and decree passed by the Trial Court has been erroneously reversed.

7. Per contra, Mr. Mukul Kulkarni, learned Advocate appearing for respondents/plaintiffs supports the impugned order. He would submit that defendants have not disputed title of Sudharshan in respect of suit land situated in Gut No.132. He transferred 20R land vide sale deed dated 10.06.1998 in favour of Meerabai.

Consequently, mutation entry no.445 was certified in her name. On death of Meerabai, her daughters Bhagyashree and Jaishree succeeded property and transferred same in favour of plaintiffs under registered sale deed dated 30.08.2012. The mutation entry no.1060 has been certified in the name of plaintiffs. The defendants have illegally objected title of plaintiffs and then dispossessed them. The Appellate Court has rightly appreciated pleadings of the parties and evidence on record. Consequently, decreed the suit. The finding of fact recorded by First Appellate Court need not be disturbed in this second appeal.

8. Having considered submissions advanced and reasoning adopted by the Courts below, it cannot be disputed that Sudharshan was owner of the land in Gut No.132 situated at Kasarkheda, Tal. Latur. He was father of plaintiffs vendor and defendants. He executed sale deed dated 10.06.1998 in favour of Meerabai (alleged second wife) and transferred ownership of land admeasuring 20R in her favour. The mutation entry no.445 was certified as per said transaction. Bhagyashree and Jaishree are daughters of Meerabai from Sudharshan. After death of Meerabai, Bhagyashree and Jaishree derived title from their mother and executed sale deed dated 30.08.2012 in favour of plaintiffs.

9. It is true that defendants have filed Regular Civil Suit No.575/2012 seeking declaration that sale deed dated 10.06.1998 executed by Sudharshan in favour of Meerabai is null and void. However, merely because such suit is pending, plaintiffs cannot be precluded from seeking declaration of their ownership based on registered sale deed dated 30.08.2012. Needless to observe that such declaration shall be subject to final outcome in Regular Civil Suit No.575/2012.

10. It is pertinent to note here that Sudharshan i.e. defendants' father executed sale deed in favour of Meerabai in the year 1998. There is reference of such transaction in Regular Civil Suit No.241/2005 instituted by Bhagyashree against defendants claiming relief of partition. The challenge to the sale deed executed by sudershan in favour of Meerabai is raised after a period of 14 years. On the basis of such suit, title of Meerabai, derived under registered sale deed dated 10.06.1998 Or after her death, her daughters Bhagyashree and Jaishree cannot be doubted as long as sale deed is not set aside by competent Court.

11. Mr. Katneshwarkar, learned Senior Advocate submits that Sudharshan was not absolute owner of property for want of partition. He could not have transferred specific share in favour of Meerabai. It is difficult to accept aforesaid contentions at this

stage, since Sudharshan has transferred specific portion in the year 1998 under registered sale deed in favour of Meerabai. Since then, there exists mutation entry of separate possession of Meerabai. There is nothing on record showing that mutation was ever challenged. Further, all such issues are now subject matter of Regular Civil Suit No.575/2012 instituted by defendants and would be considered and decided in that suit only. The fact remains that sale deed dated 10.06.1998 stipulates delivery of possession of suit land to Meerabai and now sale deed dated 30.08.2012 also demonstrates transfer of specified share in favour of plaintiffs. There are long standing entries in revenue record indicating aforesaid transfers.

12. So far as pendency of Second Appeal No.632/2018 arising out of Regular Civil Suit No.241/2005 instituted by Bhagyashree for partition and separate possession is concerned, it can be observed that suit relates to partition of 80R land left behind in possession of Sudharshan after making transfers to various persons. The land which was already transferred by Sudharshan to Meerabai is not subject matter of said suit. The plaintiff therein i.e.Bhagyashree being aggrieved by non-allotment of share to her by Sudharshan Giri from survey no.132 and house property situated within Grampanchayat limit filed that suit for partition. In that suit, defendants had specifically pleaded that there was previous

partition between them and Sudharshan Giri had sold 20R land to Meerabai i.e. mother of Bhagyashree and Jaishree. It appears that, First Appellate Court allowed Regular Civil Appeal No.178/2011 by defendants against decree in Regular Civil Suit No.241/2005, holding that Meerabai was not legally wedded wife of Sudharshan. As such, Bhagyashree and Jaishree are not his legitimate daughters. Apparently, decision in that proceeding would not have impact on *inter se* right of the parties in present suit. However, such rights would be governed by the outcome of Regular Civil Suit No.575/2012, which has been instituted, assailing sale deed dated 10.06.1998 on the basis of which plaintiffs' vendors have derived title. However, as rightly held by the Appellate Court, plaintiffs are entitled for relief of declaration of ownership and perpetual injunction, as long as title of their vendors is intact. Hence, no substantial question of law made out in this second appeal.

13. Second Appeal stands dismissed.

14. In view of dismissal of Second Appeal, Civil Application does not survive and accordingly stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE