



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

919 SECOND APPEAL NO. 308 OF 2023
with CIVIL APPLICATION NO. 8578 OF 2021

**SATYANARAYAN GIRDHARILAL DARAK
VERSUS
ROHIDAS MURLIDHAR AHER AND OTHERS**

.....
Advocate for Appellant : Mr. Bora Satyajit S.
Advocate for R/1 : Mr. Tungar Hrishikesh V.
.....

CORAM : Y. G. KHOBRAGADE, J.
DATE : 13.03.2024

PC.:-

1. Heard Mr. Bora, the learned counsel appearing for the appellant and Mr. Tungar, the learned counsel appearing for the respondent No.1. Though, the respondent Nos. 2 and 4 are duly served, but they failed to appear. The appeal is already dismissed as against respondent no.3 vide order dated 23.06.2021.

2. The appellant is the original plaintiff and the respondents are the original defendants. For the sake of brevity the parties will be referred in their original capacity as plaintiff and defendants.

3. Present Appeal under Section 100 of the C. P. C. is directed against the judgment and decree dated 20.02.2019 passed by the learned

District Judge-3, Beed in R.C.A. No.174/2014, thereby upholding the Judgment and decree dated 13.10.2014 passed by the learned C.J.S.D., Beed in R.C.S. No. 325/2009, whereby the suit of the plaintiff for declaration of ownership, recovery of possession and mesne profit dismissed.

4. In short plaintiff's case is that, he is the owner of land Gut No.142 ad-measuring 1 Acre 2 Guntha situated at village Umrad Jahagir, District Beed for sake of brevity to be referred as Suit land. According to the plaintiff, on 31.10.1996 he has purchased the suit land from the defendant no.3 under registered sale-deed for consideration of Rs.70,000/-. Since then he was in possession of the suit land, however, due to his employment he was out of station, hence, no mutation entry was effected in revenue record in respect of the suit land. In the year 2006, he voluntarily retired. Thereafter, in September, 2008, he joined as Manager with Mahesh Bank, Aurangabad. On 30.08.2009, he visited the village Umra Jahagir and went to his property for ploughing the suit land, however, the defendant no.1 objected him on the ground that he (defendant no.1) is the owner and possessor of the suit land in pursuance of the registered sale-deed bearing no.5190/2007 dated 03.12.2007 executed by the defendant no.2 in his favour. The plaintiff shown the sale-deed bearing no. 2999/06 dated 31.10.2006 which was executed in his favour by defendant no.2. Thereafter, he visited the Talathi for mutation of

his name in the revenue record in pursuance of sale-deed dated 31.10.2006, however mutation was denied because the mutation entry recorded in the name of defendant no.2 through Court in pursuance of order passed in execution proceeding no.52/2006 arising out of Judgment and decree dated 30.09.1993 passed in R.C.S. No.1/1989.

5. According to the plaintiff, he is the *bona-fide* purchaser and absolute owner of the suit property, so also, while execution of the sale-deed in his favour all the beneficiaries to the suit land gave oral consent for execution of sale-deed dated 31.10.2006. Therefore, the execution of sale-deed subsequently in favour of the defendant no.2 by the defendant no.1 is illegal, bad in law. So also, the defendant no.1 had no right, interest in the property, therefore prayed to restrain the defendant no.1 from interfering with his possession over the suit property.

6. The defendant nos.2 and 3 were duly served, but they remained absent, hence, the suit was proceeded *ex-parte* against them. The defendant no.1 filed written statement at Exh.17 and resisted the suit of the plaintiff. According to him, he is the owner and possessor of the suit land to the extent of 42 R out of Gut No.142. The defendant no.1 further contended that the land Gut No.142 is ancestral land of defendant nos.2 and 3 as well as Sakubai, Kusumbai and Shobabai. According to the Defendant no. 1, Asrabai, the

defendant no. 2 had filed a R.C.S. No.1/1989 for partition and separate possession against the defendant nos. 2 and 3 as well as against Sakubai, Kusumbai and Shobabai, who are successors of one Raghunath Warwadekar. On 30-09-1993, said R.C.S. No.1/1989 has been decreed declaring that, the defendant no.2 therein is owner of the 42 R land from Gat 142. On the basis of execution proceeding bearing no.52/2006, the Circle Inspector (Revenue Officer) handed over possession to the defendant no.2 on 14.11.2007 and since then she is in possession of the suit land. Thereafter, on 03.12.2007 the defendant no.1 purchased the suit land from the defendant no.2 under the registered sale-deed and since then the defendant no.1 is in possession of 42 R land. Therefore, he is the absolute owner of the suit property and the plaintiff is having no interest and title over the said property, hence, prayed for dismissal of the suit. After considering the evidence of both the sides on 13.10.2014 the learned trial Court passed the judgment and decree holding that the plaintiff failed to establish that he is the owner of the suit property.

7. Per contra, the defendant no.1 successfully established that he is the owner of suit property under sale-deed dated 03.12.2007 executed by defendant no.2 in his favour and from 2007 he is in possession of the suit land. So also, the mutation entry which has been carried out in the revenue record and the share to the defendant no. 2 handed over in Gut No.142 to the

extent of 42 R in pursuance of order passed in execution proceeding no.52/2006 arising out of judgment and decree dated 30.09.1993 passed in R.C.S. No.1/1989. Therefore, no question arises for interference in possession and ownership of the plaintiff by the defendant no.1, so also, the plaintiff is not entitled for injunction, possession and declaration of the ownership.

8. Being aggrieved by said judgment and decree the appellant-plaintiff filed First Appeal under Section 96 of C.P.C., bearing R.C.A. No.174/2014. On 28.02.2019, the learned First Appellate Court re-appreciated the evidence available on record, holding that the judgment and decree passed in R.C.S. No.1/1989 attended the finality and the defendant no.2 became owner of the suit property in pursuance of the said judgment and decree passed in R.C.S. No.1/1989. The defendant no.2 was put in possession of the suit property in execution proceeding bearing R. D. No.52/2006. The plaintiff was not in possession of the suit property as on 14.11.2007. Further, on 31.10.2006 when the sale-deed was executed by the defendant no.3 in favour of the plaintiff, the defendant no.3 was not the owner of the suit property. Therefore, the defendant no.3 was not competent to execute the sale-deed in favour of the plaintiff. Though, the plaintiff contended that defendant no.2 Asrabai relinquished her share by accepting an amount of Rs.23,324/-, however, said relinquishment deed not registered. Therefore,

said document was rightly discarded because as per the provisions of Section 17 of the Registration Act, if any landed property is transferred or any right relinquished other than the non testamentary instrument requires mandatory registration. Further, sale-deed at Exh.44 executed by which the suit property sold by defendant no.3 to the plaintiff does not bear signature of defendant no. 2-Asrabai being a consenting party. Therefore, the plaintiff failed to prove that he is the owner of the suit land by virtue of sale-deed dated 31.10.2006, hence, the plaintiff cannot be said to be *bona-fide* purchaser.

9. Therefore, considering the concurrent findings of both the Courts below which are based on pleadings as well as documentary and oral evidence does not appear illegal, perverse and bad in law. So also, no substantial question of law is involved in the present appeal, hence it is dismissed. Civil Application is disposed of accordingly.

[Y. G. KHOBRAGADE, J.]