

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

**SECOND APPEAL NO.14 OF 2024
WITH
CIVIL APPLICATION NO.1096 OF 2024**

Sakubai d/o Manga Mali & others APPELLANTS
(Org. Defendant Nos.2 to 4)

VERSUS

Govind Eknath Shirole & others RESPONDENTS
(Ori. Defendant Nos.1,5 to 25)

....
Advocate for the Appellants : Mr. B. R. Warma
Advocate for Respondent No.1 : Mr. C. C. Deshpande
....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 20/02/2024.

ORDER :

1. Heard rival submissions at admission stage.
2. The background facts are as under :

The present appellants, who are the original defendant Nos.2 to 4 in Special Civil Suit No.30 of 2013 alongwith other defendants in the said suit, had entered in to an agreement to sell, dated 16/06/2012 with original plaintiff i.e. present respondent No.1, in respect of the suit land i.e. Gut No.673, admeasuring 6H 76 R,

situated at Parola, Taluka : Parola, District Jalgaon for a consideration of Rs.81,00,000/-. The plaintiff at the time of said agreement to sell, paid an earnest amount of Rs.41,000/- to the defendants and pursuant to the condition mentioned in the said contract, all the defendants in the said suit, applied for grant of sanction for selling the suit land which they admittedly had acquired under the provisions of Tenancy Act. Thereafter, on 20/04/2013 the SDO, Amalner granted permission to carry out sale of said land but since all the defendants refused to execute the sale deed of the suit land, on 20/04/2013 suit for specific performance of the aforesaid agreement to sell was instituted by the present respondent No.1 / plaintiff. The learned trial court i.e. Civil Judge (Senior Division) Amalner decreed the suit vide judgment and order dated 14/09/2018. Thereafter, the other defendants except the present appellants namely defendant Nos.2 to 4 executed sale deed of their share in favour of respondent No.1 / plaintiff. The present appellants then challenged the said decree before the learned first appellate court i.e. District Judge-1, Amalner in RCA No.42 of 2018. However, the learned first appellate court dismissed the said appeal by confirming the judgment and decree of the learned trial court. Hence, this appeal.

3. The learned counsel for the appellants submits that there are so many substantial questions of law involved in this appeal. However, he mainly agitated on following substantial questions of law :

- I) *Both the courts below did not consider the aspect of fraud at the hands of the plaintiff by joining hands with stamp vendor.*
- II) *Both the courts below failed to consider aspect of hardship to the present appellants as they became landless by passing of such decrees.*
- III) *The appellants are holding 112 R land when ownership certificate was granted under Section 32 of the Bombay Tenancy & Agricultural Lands Act but both the courts below granted decree for 76 R land only and therefore, failed to consider the inter se family arrangement between all the original defendants in respect of their respective holdings.*

4. On the contrary, the learned counsel for respondent No.1 / plaintiff strongly opposed the submissions and pointed out that both the courts below have properly appreciated the entire evidence on record in proper perspective. So far as issue of landlessness as raised by the appellants at this juncture is concerned, the

appellants did not conduct cross-examination on this aspect at all. On the contrary, he pointed out that there is concurrent finding of both courts below against the present appellants and it was already established that no fraud was played as the remaining defendants have already executed sale deed in favour of the present respondent No.1 / plaintiff.

5. Admittedly, all the defendants of the trial court had become owners of the suit land by virtue of provisions of Bombay Tenancy and Agricultural Lands Act 1948 under Section 32. Further, it is extremely important to note that the learned trial court in its judgment, has properly appreciated entire documentary evidence on record. It appears that the trial court has opined that though defendant Nos.2 to 4, who are the present appellants, had challenged the legality of the agreement to sell but they did not deny their signatures and thumb impressions on the said agreement. Moreover, the present appellant No.3 had in fact specially admitted her signature on the said deed in her cross-examination. Therefore, it was incumbent upon the present appellants to prove the alleged fraud but they failed in the same. So far as aspect of landlessness is concerned, no such suggestion was given on behalf of the present appellants in the cross-examination

of respondent No.1 / plaintiff. On the contrary, it appears that the present appellants had also signed the necessary documents for obtaining required permission from SDO, Amalner for sale of the land. Though the learned counsel for the appellants relied upon judgment reported in **2017 (5) Mh.L.J. 259** on the aspect that hardship issue was not discussed, but it was not agitated at all by the present appellants in proper manner.

6. So far as *inter se* family arrangement between all the defendants is concerned, the learned counsel for the appellants vehemently argued that the present appellants were holding 112 R land at the time of becoming owner of the suit land by virtue of provisions of Bombay Tenancy and Agricultural Lands Act, but both the courts below ascertained their share to the extent of 76 R only and passed decree to that effect. However, *inter se* distribution of respective areas amongst all the defendants is an admitted position. It is extremely important to note that DW-1 Sakubai, who is the present appellant No.1, has admitted in her cross-examination before the learned trial court that she alongwith defendant Nos.3 & 4 were jointly having 1/9 share in the suit property. Therefore, 1/9 share equivalent to 76 R has rightly mentioned in the decree by both the lower courts. Considering all

these aspects and the concurrent finding by both the courts below, no substantial question of law appears to be involved in this appeal and therefore, the second appeal stands dismissed at admission stage and disposed of accordingly.

7. In view of dismissal of second appeal, the pending Civil Application No.1096 of 2024 also stands disposed of.

(SANDIPKUMAR C. MORE, J.)