



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**SECOND APPEAL NO. 195 OF 2010**

- 1) Shri Vasantryao S/o Bhaurao Dharmik,  
aged about 50 years, Occ. - Agriculturist,  
R/o. Mowad, Tahsil – Narkhed,  
District – Nagpur.
- 2) Shri Chandrashekhar S/o Laxmikant Kharpate,  
Aged about 38 years, Occ. - Service,  
R/o. Santoshi Mata Road,  
Ward Pandhurna, District Chindwara (M.P.)
- 3) Shri Shashank S/o Laxmikant Kharpate,  
Aged about 38 years, Occ. - Service,  
R/o. Santoshi Mata Road,  
Ward Pandhurna, District Chindwara (M.P.)
- 4) Sau. Godubai Wd/o. Laxmikant Kodape (Dead)  
through her Legal Representative :

Amended as  
per Court's  
order  
dt.28.2.2023

- 4-A) Suresh S/o Laxmikant Kodape,  
Aged about 70 years, Occ. - Nil,  
R/o. Parrasakshi Society, D-502,  
Besides Lotus Multispecialty Hospital,  
Pimple Saudagar, Pune-411027.

**.... APPELLANTS**

**// VERSUS //**

- 1) Shri Bhuraram S/o Nagoji Bhode,  
Aged about 65 years, Occu. - Agriculturist,
- 2) Shri Vasant S/o Bhuraram Bhode,  
Aged about 35 years, Occ. - Agriculturist,
- 3) Shri Vishnu S/o Bhuraram Bhode,  
Aged about 30 years, Occ. - Agriculturist,

Respondent No. 1 to 3 R/o. Mowad,  
Tahsil Narkhed, District Nagpur.

- 4) Shri Dileep S/o Narayan Kharpate,  
Aged about 48 years, Occ. - Service,  
State Bank of India,  
Chapa District Bilaspur (M.P.)
- 5) Shri Pradeep S/o Narayanrao Kharpate,  
Aged about 45 years, Occ. - Service,  
R/o. Near Shanti Nagar, Post Office,  
Raipur (M.P.)
- 6) Shri Sanjay S/o Narayanrao Kharpate,  
Aged about 40 years, Occ. - Service,  
R/o. Bilaspur, Raipur Gramin Bank,  
Branch Basin, Tahsil Rajim,  
District Raipur (M.P.)
- 7) ~~Smt. Pratibha Wd/o Vasantryao Kharpate,  
Aged about 65 years, Occ. - Nil,  
R/o. Bhalchandra Housing Society,  
Block No.5, Shikare Wadi, Nashik Road.~~
- 8) Rajendra S/o Vasantryao Kharpate,  
Aged about 37 years, Occ. - Service,  
R/o. Bhalchandra Housing Society,  
Block No.5, Shikare Wadi, Nashik Road.
- 9) Dr. Virendra S/o Vasantryao Kharpate,  
Aged about 35 years, Occ. - Practice,  
R/o. Bhalchandra Housing Society,  
Block No.5, Shikare Wadi, Nashik Road.
- 10) Shri Madhorao S/o Sadashivrao Kharpate,  
Aged about 63 years, Occ. - Nil,  
R/o. Durga State Bank Colony,  
Sanjivani Nagar, Gadha, Jabalpur.
- 11) Shri Manohar S/o Jagannath Dani (Dead)  
through his Legal Representatives :

Deleted as per  
Register (J)  
order  
dt.26.7.2012.

Amendment  
carried out as  
per Court's  
order dt.  
01.07.2015

- 11-1) Padmanabh Manohar Dani,  
Aged about 61 years, Occ. - Retired,  
R/o. 5, Amaltash Collony-1,  
Chunabhatti, Kolar Road, Bhopal-462016.

11-2) Upendra Manohar Dani,  
Aged about 55 years, Occ.- Service,  
R/o. 394, N-3, A-Sector,  
Govindpura, BHTL, Bhopal-462023. .... **RESPONDENTS**

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Mr. S. P. Kshirsagar, Advocate for Appellants.  
Mr. A. S. Gotmare, Advocate for Respondent Nos.1 to 3.  
Ms. Swati Kulkarni, Advocate for Respondent Nos.4 to 6.

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**CORAM : SANJAY A. DESHMUKH, J.**

**DATE OF RESERVING THE JUDGMENT : 26.08.2024.**

**DATE OF PRONOUNCING THE JUDGMENT : 30.08.2024.**

**JUDGMENT.**

1. This appeal is preferred against the Judgment and decree passed by the District Judge No.8, Nagpur in Regular Civil Appeal No. 5 of 2001, dated 06.10.2009, which was preferred against the Judgment and decree passed by Civil Judge, Junior Division, Narkhed in Regular Civil Suit No.128 of 1991 dated 30.11.2000.

2. Brief facts of the case are as under :

(i) The appellant No.1 who was plaintiff came with the case that he had purchased the suit property bearing Block/Survey No. 615 (Old No.310) admeasuring 1.01 H.R. for consideration of Rs.28,000/- from one Laxmikant Sadashivrao Kharpate, the father of the other appellants by registered sale-deed dated 09.06.1989. Since

then he is in possession of the suit property. His name was recorded to the Record of Rights of suit property. The plaintiff further contended that on 09.10.1991, the defendant Nos.1 to 3 along with 15 to 16 labourers entered into the suit property and obstructed the plaintiff when he was harvesting the crop of Soyabin and caused obstruction to his possession. During pendency of the suit, the plaintiff was dispossessed by the defendants, therefore, the plaintiff amended the plaint and prayed for restoration of the possession of the suit property from the defendant Nos.1 to 3.

(ii) Defendant Nos.1 to 3 strongly opposed the suit. They contended that Laxmikant Kharpate, executed the sale-deed in question in favour of plaintiff. It is legal only to the extent of his share. They denied cause of action arose to file the suit. There was dispute between the Narayan and other defendants about the possession of the suit property. Therefore, to give counterblast, said suit is filed. That dispute was decided under Section 145 of the Code of Criminal Procedure, 1973 by S.D.O., Katol, District Nagpur. It was held that defendant No.2 is in possession of the suit property since 1978 to 31.05.1989. Defendant No.1 is cultivating the suit property since 1978 to 1989 on the Theka/Contract basis and since then, he is in continuous possession of the suit property. Therefore, as per the

provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short the “Tenancy Act”), they are owner of the suit property. He has right to purchase it. The vendor of the plaintiff was not competent to transfer the suit property hence, said sale-deed is not legal and valid. It is lastly prayed to dismiss the suit.

(iii) The learned trial Court after considering the matter before it held that the plaintiff is lawful owner of the suit property. The defendant Nos.1 to 3 are directed to hand over the possession of the suit property to the plaintiff and defendants are perpetually restrained from interfering into the possession of the plaintiff over the suit property. The suit was partly decreed.

3. The learned First Appellate Court allowed the appeal by setting aside the judgment and decree passed by the learned trial Court. The suit was dismissed.

4. This Court formed the following substantial questions of law :

(1) *Whether the first appellate Court could have reversed the findings recorded by the trial Court in regard to the ownership of the appellant/plaintiff over the suit property for the reasons recorded in the appellate judgment?*

(2) *Whether in the facts and circumstances of the case the defendants were legally entitled to protect their possession against the plaintiff and/or whether the plaintiff was entitled to decree of possession as held by the trial Court?*

5. Learned Advocate Mr. S. P. Kshirsagar for the appellants/plaintiff submitted that the brothers of seller of the suit property are Vasantrao and Manohar who were also the defendants in the suit. They have not denied the claim of the plaintiff. On the contrary, they filed affidavit stating that the plaintiff is the owner of the suit property. He further submitted that the defendants Nos.1 to 3 though pleaded as to a legal capacity to possess the suit property that they are tenant, they have not established tenancy right. They have not proceeded to file any tenancy proceeding for purchasing of suit property as per the Tenancy Act. He also pointed out the findings of the learned trial Court as well as first appellate Court regarding title to the suit property. He pointed out that learned first appellate Court did not consider that title is acquired by the plaintiff by the sale-deed dated 09.06.1989.

6. Learned Advocate Mr. S. P. Kshirsagar for the appellants further submitted that the sale-deed is not declared illegal by the Court. It is not challenged by any other co-owners i.e. brothers, sisters of late Laxmikant, whose legal representatives are appellants

Nos.2 to 4 in this appeal. It is lastly prayed to allow the appeal by setting aside the impugned judgment.

7. Learned Advocate Mr. A. S. Gotmare for the respondent Nos.1 to 3 submitted that plaintiff's title to the suit property is not proved. Laxmikant was only co-owner of the suit property. He alone cannot sell it. Defendant Nos.1 to 3 are in possession of the suit property as tenants. They are having long standing possession over suit property, it cannot be disturbed. The reasons and findings of the first appellate Court are legal and correct. It is lastly prayed to dismiss the appeal.

8. The admitted facts are that other owners of suit property have not challenged the sale-deed executed in favour of the plaintiff by their brother Laxmikant. Name of the plaintiff is mutated to the Record of Rights of suit property. Defendant Nos.1 to 3 have though adduced evidence to prove that they are tenants of the suit property, they have not proceeded to file any case for purchasing of the suit property as per the provisions of Tenancy Act.

9. The defendant Nos.1 to 3 are in possession of the suit property and mere possession does not confer any title. The possession must be referable to valid title. There are two important

legal concepts as to the title and possession of the immovable properties i.e. first “title follows possession” and second “the possession follows title”. As per Section 110 of the Indian Evidence Act, 1872 if a person is in possession of an immovable property and if nobody prove/establish his title, law presumes that he is having a title to the disputed property. In simple words possession follows title. But if there is evidence of title of any immovable property, he has right to take possession by following due process of law.

10. In this case, the burden of proof lies upon the plaintiff to prove that he has title to the suit property. Similarly, burden to prove their tenancy right lies upon defendant Nos.1 to 3. The plaintiff had adduced evidence of registered sale-deed at Exhibit-144. It is not challenged by its owners. The defendants though denied it, they have not established any legal right over the suit property. The plaintiff has become owner of suit property as per Section 54 of the TP Act. The defendant Nos.1 to 3 have failed to prove their tenancy right in the suit property. The defendants' possession over the suit property is not referable to the valid title. When the title of the plaintiff's to suit property is proved, he has legal right to claim possession of it by filing civil suit as per Section 5 of the Specific Relief Act, 1963. The defendant Nos. 1 to 3 have not shown any justifiable legal ground to

protect their possession as they have not proceeded to claim their tenancy right over the suit property against earlier owner of the suit property or the plaintiff. Therefore, only because one of the owner of the suit property had sold out the suit property to the plaintiff, which is not objected by co-owners, his brothers till today. The defendant Nos.1 to 3 have no such right to object the sale-deed in question. They have not filed any suit against the plaintiff, right in the suit property is legally ripen by conduct of waiver of co-owners. The defendant Nos.1 to 3 have no such *locus standi* to object/challenge the right of plaintiff's over the suit property. Therefore, the argument of the learned Advocate for the defendant Nos.1 to 3 is not acceptable in this regard.

11. The plaintiff had established that they are having title to the suit property. The defendant Nos.1 to 3 have no *locus standi* to challenge the title of the plaintiff over the suit property. They cannot take disadvantage of the fact that brothers of Laxmikant were not party to the sale-deed.

12. The learned first appellate Court erred in giving cogent and acceptable reasons and findings on the points in controversy. The reasons recorded by first appellate Court are not legal and correct.

13. For the reasons discussed above, the substantial question of law No.1 is answered that first appellate Court would not have recorded reverse finding regarding ownership of the plaintiff therefore, the impugned judgment and findings in it is illegal, in this regard. The substantial question of law No.2 is answered in the negative that defendant Nos.1 to 3 have not proved their tenancy right over the suit property. Therefore, they are not entitled to protect their possession over it and hence the plaintiff is entitled to get possession of the suit property.

14. The appeal deserves to be allowed. The impugned judgment of the learned first appellate Court deserves to be set aside and judgment and decree of the learned trial Court deserves to be upheld.

15. The plaintiff is compelled to face this appeal. He must have incurred some amount for it. Therefore, it would be proper to direct the respondent Nos.1 to 3 to pay Rs.10,000/- (Rs. Ten thousand only) as costs of appeal to the plaintiff. Hence the following order :

(i) The appeal is **allowed**.

- (ii) The judgment and decree passed by learned first appellate Court dated 06.10.2009 in Regular Civil Appeal No.5 of 2001 is set aside and judgment and decree passed by learned trial Court on 30.11.2000 in Regular Civil Suit No.128 of 1991 is upheld.
- (iii) The respondent Nos.1 to 3 are directed to pay costs of appeal **Rs.10,000/-** (Rs. Ten thousand only) to the plaintiff within six months. If it is not paid within six months, the respondent Nos.1 to 3 shall pay 9% interest thereon from the date of this judgment.
16. The appeal is **disposed of**.

**(SANJAY A. DESHMUKH, J.)**