



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.78/2005

Chandrabhan s/o Shrawanji Balpande
(Since dead through L.Rs.)

1. Gunwantrao s/o Chandrabhan
Balpande, Aged about 68 years,
Occ.: Agriculturist, R/o. Ward
No.2, Peth Vighag, Narkhed, Tah.
Narkhed, District – Nagpur.
2. Vasant s/o Chandrabhan Balpnade,
(Since dead through L.Rs)
 - 2.1 Smt. Vimal wd/o Vasant Balpande,
Aged about 60 years, Occ. Agriculturist.
 - 2.2 Ramesh s/o Vasant Balpande,
Aged about 42 years, Occ.: Agriculturist.
 - 2.3 Hemraj s/o Vasant Balpande,
Aged about 36 years, Occ.: Agriculturist.
- All Resident of Ward No.2, Peth Vibhag,
Narkhed, Tah. Narkhed, District – Nagpur.
- 2.4 Smt. Meena w/o Jairam Ghatole,
Aged about 40 years, Occ.: housewife,
R/o. Haveli Mohgaon, Tah. Sounsar,
District - Chhindwara (M.P.).
- 2.5 Smt. Meena w/o Wasudeo Talmale,
aged about 32 years, Occ: Housewife,
R/o Bhandar Gondari, Tah. Pandhurna,
District – Chhindwara.
- 2.6 Smt. Minakshi w/o Vijay Rewatkar,
Aged about 28 years, Occ.: Housewife,
r/o. Khairgaon, Tah. Narkhed,
District- Nagpur.

... **APPELLANTS**

...**VERSUS**...

1. Jagorao s/o Bajirao Balpande,
(dead thr. L.Rs.)
 - 1-a. Shri Sahebrao Jagoji Balpande,
Aged about 55 years, Occupation Service,
R/o Plot No.70/2, Sector 14, at post
Gandhi Nagar, Tah. and District-
Gandhi Nagar (Gujrat State).
 - 1-b. Sau. Meena Dinesh Farkase,
Aged about 52 years, Occ. Housewife,
R/o. Pandhurna, Tah. Pandhurna,
District – Chhindwara.
 - 1-c. Anusaya Pundlikrao Rewatkar,
Aged about 48 years, Occ.Housewife,
R/o. I.U.D.P. New Basti, Katol,
Tah. Katol, District – Nagpur.
 - 1-d. Sau. Kamal Tulshiramji Chafle,
Aged about 45 years, Occ. – Housewife,
R/o. Lohari Sawanga, Tah. Narkhed,
District – Nagpur.
2. Anil s/o Jagorao Balpande,
Aged about 34 years, Occ.: Business,

R/o Tinkheda, Post Tinkheda,
Tah. Narkhed, District- Nagpur.

...RESPONDENTS

Mr. H. M. Bobde, Advocate for appellant.
Mr. S. A. Sonak, Advocate instructed by Mr. A. S. Sonare,
Advocate for respondents.

CORAM:- ANIL L. PANSARE, J.

DATE OF RESERVING THE JUDGMENT :- 26.03.2024.

DATE OF PRONOUNCING THE JUDGMENT:- 01.04.2024.

JUDGMENT

This appeal has been admitted on following substantial
question of law.

“The question, whether the Courts below could have decreed the suit for declaration on the basis of 1956 partition (as alleged) when the forcible dispossession of respondents was not established before them?”

2. The respondents lodged a suit being Regular Civil Suit No. 49/1992, for declaration, possession and permanent injunction against the predecessor of the appellants. The respondents shall be hereinafter referred to as “Plaintiffs” and the appellants as “Defendants”.

3. The Plaintiffs’ suit came to be decreed vide judgment dated 19.10.2000 in the following terms.

- “(i) The Suit is decreed with costs.*
- (ii) It is hereby declared that the plaintiffs are absolute owner of the suit field bearing survey No. 135 admeasuring about 1.17 hectares situated at village Nanduri.*
- (iii) The defendant is directed to hand over the possession of the suit field to the plaintiffs.*
- (iv) The defendant is restrained perpetually interfering into the possession of the plaintiffs over the suit field after delivering it to the plaintiffs.*
- (v) Decree be drawn accordingly.”*

4. The Defendants carried the matter before the First Appellate Court in Regular Civil Appeal No. 962/2000, which was dismissed vide judgment dated 30.06.2004. The Defendants are aggrieved by the concurrent findings rendered by the Courts below.

5. It transpires through pleadings and evidence that one Shrawan was having three sons namely, Bajirao (plaintiff No.1's father), Pandurang (not made party to the suit) and Chandrabhan (appellant). The said Shrawan was having agricultural land at village Nanduri. After death of Shrawan, three brothers namely, Bajirao, Pandurang and Chandrabhan have, on 19.06.1956, partitioned the property, vide partition deed Exh.-43. The names were mutated and the brothers started cultivating the land separately. The Courts below noted that the partition deed, being not registered, cannot be used as an evidence of partition. However, the entry in Adhikar Abhilekh Exh.-34 showed that in the year 1956, the Plaintiff, the defendant no.1 and his brothers were shown as owners with an endorsement in column no. 6 about oral partition. Thus, the Courts below found sufficient evidence in favour of the Plaintiffs that in the year 1956, by way of partition, they have become owners of the suit plot.

6. In the year 1986, second partition took place between the sons of Bajirao. The suit property came to the share of plaintiff no.1. A partition deed to that effect was executed on 02.06.1986 and was registered with the office of Sub Registrar. The partition deed has been placed on record at Exh.-37. Accordingly, Courts below have held that plaintiff no.1 is owner of the suit property.

7. The claim of the Defendants was that they are in continuous possession of the suit property for the period from 1930 onwards and thus became owners by adverse possession.

8. The First Appellate Court noted that the Defendants did not produce any document to show that they were in possession of suit property for the period from 1936 till 1986. The counsel appearing for the Defendants also failed to show any cogent evidence to support this plea of uninterrupted possession.

9. As against, the Plaintiffs' case was that in the year 1986, the defendant made an application to the revenue authority to mutate his name as owner of the suit property. The Naib Tahsildar allowed the application and immediately in the year 1989, the defendant took forcible possession. The Tahsildar's order came to be set aside in the appeal before the Sub Divisional Officer and Sub Divisional Officer's finding has been maintained by the Collector. The order of Collector has attained finality. However, document Exh.-39, 7/12 extract show that the original defendant was in possession of the suit property in the year 1986-87.

10. The First Appellate Court noted that the original defendant failed to show as to how and in what capacity he is/was holding possession of the suit property. This property was not

allotted to him in partition that occurred in 1956 nor is there any other document to show that he became owner of the suit property through any valid instrument. Accordingly, the First Appellate Court held that the Defendants' possession was illegal and contrary to the law. The Court further noted that the plea of possessory title is not applicable against the true owner of the property and, therefore, true owner is entitled to claim possession of the property, in accordance with law.

11. Thus, what transpires is that the Defendants have no valid document of ownership over the suit property. The Plaintiffs have valid document of title, one of which is partition deed Exh.-44. In addition, document Exh.-43 which bears signature of original defendant, indicate that there occurred partition between the original defendant, his brother Pandurang and sons of Bajirao. The original defendant was allotted field survey no.62/2 and 62/5 whereas plaintiff no.1 and his brothers were allowed field survey no.62/1 (new No.135) and 62/4. The suit field is bearing survey No.135, admeasuring 1.17 HR situated at Tinkheda.

12. The Plaintiffs claimed that Defendants took forcible possession in the year 1989. However, documentary evidence showed his possession in the year 1985-86. Except for above,

there is nothing on record to show that the original defendant was in possession of the suit property prior to 1985-86, at least the counsel for Defendants failed to show any such document.

13. Thus, there is evidence of ownership in favour of the Plaintiffs. There is no evidence that the Defendants were in possession of suit property prior to 1985-86. The Defendants failed to justify their possession. Both the Courts below have rendered a concurrent finding that the Defendants had no authority to remain in possession of the suit property. In the circumstances, even if the Plaintiffs failed to prove the theory of forcible dispossession, the fact remains that they have proved ownership over the suit property and, therefore, as a consequential relief, they are entitled for the relief of possession. Both the Courts below have rendered concurrent finding as regards ownership of the Plaintiffs over the suit property and, therefore, entitled to recover the possession from the Defendants. In that sense, the question as formulated does not arise for consideration. There is thus no substance in the second appeal. The appeal is accordingly dismissed.

Corrected as per Hon'ble
Court's order dated
26.04.2024

The order shall take effect after eight weeks from today.

(Anil L. Pansare, J.)

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