

SECOND APPEAL NO. 348 OF 1992

- versus

1. Limbrao s/o Baburao Ghogare
(Deceased through LRs)
 - 1/1 Kusum Anjanrao Thombare
age 62 years, occ. Household
 - 1/2 Kesharbai Dattatray Gaikwad
age 59 years, occ. Household
 - 1/3 Sindhubai Rama Dongare
age 57 years, occ. Household
 - 1/4 Shobha w/o Ramrao Gardas

age 54 years, occ. Household

1/5 Vyankat s/o Limbraj Ghogare
age 52 years, occ. Agril,

1/6 Shivaji s/o Limbraj Ghogare
age 49 years, occ. Agril.,

All r/o Ekurka, Tq. Kallam,
Dist. Osmanabad.

2. Sheela d/o Shivilal Pardeshi
age 32 years, occ. Agri. & household
r/o Kothala, Tq. Kallam,
Dist. Osmanabad.

3. Chhaya /do Shivilal Pardeshi
age 29 years, occ. Agril & household
r/o as above.

Mr. N. B. Khandare, Advocate for the Appellants.

Mr. V. D. Salunke, Advocate for Respondent Nos. 1/1 to 1/6.

CORAM : R. M. JOSHI, J.

DATE : 2nd JANUARY, 2025.

JUDGMENT :

1. This second appeal takes exception to the concurrent findings recorded in the judgments passed by Trial Court and First Appellate Court in Regular Civil Suit No. 41/1997 and Regular Civil Appeal No. 45/1988 respectively.

2. Parties are referred to as Plaintiff and Defendants.

3. For the purpose of better understanding of the substantial questions of law involved herein, it would be relevant to take into consideration the case sought to be made out by the parties before the Trial Court.

4. It is the case of Plaintiff that Shivilal was owner of Survey No. 63 situated at village Kothala, Tq. Kallam, admeasuring 14 acres and 25 gunthas. Plaintiff claims that Shivilal agreed to sell 7 acres 12 gunthas land from eastern side of Survey No. 63 in favour of Plaintiff at the rate of rs. 1,050/- per Acre and received Rs. 620/- as earnest amount. Plaintiff claims that he was put in possession of the suit property. It is his further case that Shivilal died on 22.09.1974 leaving behind him Defendant Nos. 4 and 5, daughters, as his legal heirs. It is claimed by Plaintiff that since Shivilal was ill and needed money for medical treatment, he agreed to sell the suit land to the Plaintiff. It is claimed that on 21.09.1974, he executed a Tharav Patra in respect of the suit land. The said document was executed in the presence of witnesses. It is claimed by Plaintiff that on the same day, amount of Rs.620/- was paid to Shivilal towards earnest money. Since Shivilal died on 22.09.1974, Plaintiff requested Talathi for entering his name in the cultivation column in the record of rights of

the suit land. However, the said authority refused to do so. It is alleged by Plaintiff that in collusion with Defendant Nos. 1 to 3, the Talathi entered name of Defendant No. 2 Balasaheb in the cultivation column in the record of rights of the suit land for the years 1973-1974, 1974-1975 and 1975-1976. It is claimed by Plaintiff that Defendant No. 2 was never in possession of the suit land at any point of time and as such entries to that effect are illegal and wrong. It is specifically averred by Plaintiff that Defendant Nos. 1 to 3 are contemplating obstruction in the possession of Plaintiff over the suit land. Hence, suit came to be filed seeking following reliefs :-

1. मौजे कोथळा ता. कळंब येथील जमिन सर्वे नंबर 63 क्षेत्रफळ 14 एकर 25 गुंटे आकार 26 रुपये 56 पैसे पैकी पूर्वकडील 7 एकर 12 गुंटे जमिनी संबंधी सन 1973-74, 1974-75 व 1975-76 सालाच्या 7 X 12 पत्रकातील कुळ आणि खंड रकान्यातील प्रतिवादी नं. 2 ची नोंद चुक असल्याचे घोषित करण्यात यावे.
2. वरिल जमिनीवरील वादीच्या कबज्यास प्रतिवादींनी निरंतर हरकत करु नये म्हणून वादीच्या हक्कात प्रतिवादीच्या विरुद्ध निरंतरच्या मनाई हुकूमाची डिक्री देण्यात यावी.
3. या दाव्याचा खर्च वादीस प्रतिवादीकडून देण्यांत यावा.
4. या व्यतिरिक्त वादी ज्या योग्य व न्याय्य न्यायदानास पात्र असेल ते न्यायदान वादीस देण्यांत यावे.

5. Defendant Nos. 1 to 3 resisted the suit by filing written statement denying possession of Plaintiff over the suit property. It is also denied that Shivilal agreed to sell suit land to the Plaintiff. It is

their further case that Defendant No. 2 is in possession of entire land bearing Survey No. 63. It is claimed that on 01.06.1974, Shivilal agreed to sell 7 acres 13 gunthas land from the western side of Survey No. 63 to Defendant No. 2 Balasaheb for consideration of Rs.7,325/-, and he received Rs. 5,000/- and executed earnest receipt. It is claimed by these Defendants that on behalf of daughters of Shivilal, Bankatlal, being their guardian, executed registered sale-deed in respect of the suit land in favour of Defendant No. 2. It is stated in the written statement that Defendant No. 2 is possessing the suit land as tenant. There is specific objection raised with regard to the maintainability of suit on the ground that suit simplicitor for perpetual injunction without asking relief of specific performance of contract is not maintainable so also declaration in respect of entries in the revenue record cannot be sought.

6. It needs to be mentioned that initially before the Trial Court, Bankatlal, guardian of Defendant Nos. 4 and 5 appeared and filed written statement admitting claim of Plaintiff in respect of the suit land. However, after Defendant Nos. 4 and 5 became major, they filed separate written statement denying the claim of Plaintiff.

7. Learned Trial Court framed issues at Exhibit 103 and parties were permitted to adduce evidence. Plaintiff examined himself (Exhibit 142) and also examined 3 witnesses Govardhan at Exhibit 145, Chhandrrao at Exhibit 146 and Narayan at Exhibit 147. On the other hand, Defendant No. 2 examined himself at Exhibit 161 and also examined Dattatraya and Uddhav at Exhibits 163 and 164 respectively. Learned Trial Court, on appreciating evidence on record, decreed the suit and declared that entries in the name of Defendant No. 2 standing in 7/12 extracts of the suit land for the respective years are incorrect. Injunction was also granted against Defendants and they were permanently restrained from obstructing possession of Plaintiff over the suit land. This order was unsuccessfully challenged in Regular Civil Appeal No. 45/1988. Hence, this second appeal.

8. This Court, while admitting the appeal, framed substantial questions of law were framed as per Ground Nos. VII and VIII of the appeal memo which read thus :-

- 1) Both the Courts below wrongly held that the Judgment of the High Court delivered in Ceiling Proceedings operates as res-judicata.

2) It ought to have been held that, the suit simplicitor for injunction without praying relief of specific performance is not maintainable.

9. Learned counsel for Defendants submits that both the Courts below committed error in not considering the fact that the suit is not maintainable for the reason that no relief of specific performance of contract is sought by the Plaintiff. He also contends that agreement to sale (Exhibit 143) is hit by Section 29 of the Contract Act. It is contended that the said agreement does not disclose the property which was allegedly sought to be sold by Shivalal to Plaintiff, and as such said agreement is not executable. It is his further submission that the learned Trial Court has committed error in not framing the issue of tenancy as claimed by Defendant Nos. 1 to 3 in their written statement. A grievance is also made by him that the learned Trial Court without framing such issue recorded finding that Defendant No. 2 is not tenant. He drew attention of the Court to the pleadings of the parties and emphasised on evidence led before the Trial Court. Referring to the evidence on record, it is his submission that the entire burden lies upon the Plaintiff to prove that he is in lawful possession of the suit property and unless lawful possession is established he would not be entitled to seek any

injunction/relief in respect of the same. In this regard, reference has been made to the evidence of Narayan (P.W.4) who is a scribe of the said agreement, who in clear terms admits that Shivilal did not tell him about the survey number, area of land etc and therefore, it was not written on the said document. It is his submission that having regard to these facts, the Trial Court ought to have dismissed the suit. He also sought to canvass before this Court that the declaration in respect of revenue record more particularly entries in 7/12 extracts could not have been subject matter of decision before the Civil Court. He took assistance of following case laws, to support his submissions:

- (i) Laxmibai Sambha Jadhav & others vs. Bharatlal Premchand Gandhi and others
1976 AIR(Bom.) 160.
- (ii) Narayan Muga Teli vs. Ramchandra Muga Teli & others
2004(3) All.M.R. 880
- (iii) Hussain Khan s/o Sawarkhan Pathan vs. Shaikh Ahmed s/o Shaikh Lal
1988(4) Bom.C.R. 60
- (iv) Parmanand Gopalrao Kesari vs. Dilip Gopalrao Deshmukh
2020(2)All.M.R. 666
- (v) Sachin S. Shah vs. Hemant D. Shah and others
2015(4) Bom.C.R. 636
- (vi) Anathula Sudhakar vs. P. Buchi Reddy

- 2008 AIR(SC) 2033
- (vii) Suraj Lamp and Industries Pvt. Ltd. vs.
State of Haryana and another
2012 AIR(SC) 206
- (viii) Rambhau Namdeo Gajre vs. Narayan Bapuji Dhotra
2004 AIR(SC) 4342
- (ix) Kalidas Duryodhan Kadam & others vs. Akash Balu Kadam
Writ Petition No. 283/2020 decided on 10.03.2022.
- (x) Shri TarachandJamnadas Wagwani & another vs.
Smt. Anusayabai Gapuji Chandramore
Second Appeal No. 463/2004 decided on 02.07.2015.

10. Learned counsel for Plaintiff supported the impugned judgments and decree. He resisted the submissions made on behalf of Appellants and relied upon following judgments :-

- (i) Shrimant Shamrao Suryavanshi vs. Pralhad Bhairoba
Suryawanshi
2002 AIR (SC) 960
- (ii) Laxman Pandu Khadke vs. Pandharinath Purushottam Rane
1989 Mh.L.J. 752
- (iii) Gulab Ayubkhan Pathan vs. District Collector
2019 AIR BOM R 3 795.
- (iv) Daya Singh and another vs. Gurdev Singh & others
2010(4) Mh.L.J. 190
- (v) Bank of India vs. Lakshimani Dass
2000 AIR(SC) 1172
- (vi) Sadashiv Chander Bhamgare vs. Eknath Pandharinath

Nangude

2004(3) Mh.L.J. 1131

- (v) Sucha Singh Sodhi vs. Baldev Raj Walia and another
(2018) 6 Supreme Court Cases 733
- (vi) Mithu Khan vs. Ms. Pipariyawali and otherwise
AIR 1986 Madhya Pradesh 39
- (vii) S. R. Varadaraja Reddiar vs. Xavier Joseph Periararia
AIR 1991 Kerala 288
- (viii) Smt. Shbat Die vs. Devi Phal and others
AIR 1971 Supreme Court 2192
- (ix) Maneklal Mansukhbhai vs. Jamshedji Ginwalla and sons
AIR 1950 Supreme Court 1

11. This Court has carefully considered the oral submissions of counsels for both sides and case laws relied upon.

12. At the outset, certain admitted facts are necessary to be recorded. Undisputedly, Shivilal was owner of Survey No. 63 situated at village Kothala. He had not owned any other property, since it is not the case of any party that Shivilal was owner of any other land other than the suit land. There is further no dispute about the fact that agreement to sale came to be executed by Shivilal in favour of Defendant No. 2 on 01.06.1974. Plaintiff's claim is in respect of agreement to sale of the property towards eastern side which is

executed on 21.09.1974. No doubt, Shivilal died on the next day of execution of agreement with Plaintiff. Pertinently, agreement to sale executed in respect of another portion of Survey No. 63, with Defendant No. 2 came to be executed before 3 months of his death. Thus, this transaction in respect of another part of Survey No. 63 shows that Shivilal had intention to sell property.

13. It would be material to take note of the fact that the guardian of daughters of Shivilal, infact executed sale-deed in favour of Defendant No. 2 on the basis of agreement to sale entered into with Shivilal. This guardian, filed written statement on behalf of minors admitting claim of Plaintiff. It is after Defendant Nos. 4 and 5 became major they filed separate written statement and denied execution of agreement to sale by Shivilal so also handing over of possession of suit property by Shivilal to Plaintiff. However, though such plea is raised, Defendant Nos. 4 and 5 never entered in the witness box to substantiate their said case before Trial Court.

14. Now, question that arises before this Court is whether it was sufficient that Defendant No. 2 leads his evidence to prove that there was no agreement to sale between Shivilal and Plaintiff, when

admittedly, he was neither witness to agreement or concerned with the same. No doubt, initial burden is on the Plaintiff to prove that there was agreement to sale so also the fact that he was put into possession of the suit property. Evidence is led by the Plaintiff and which gets further support from three witnesses. During cross-examination of these witnesses, nothing was brought on record in order to discard their evidence about execution of agreement to sale in respect of suit property by Shivilal and handing over of possession to Plaintiff. On the other hand, cross-examination of Narayan clearly shows that there was agreement executed by Shivilal in favour of Plaintiff. Though he also states that he was not told about the survey number, area of land, etc., this statement of witness becomes irrelevant in view of the fact that there is no case made out before the Trial Court that Shivilal was holding any other land than Survey No. 63. Had it been so, the provisions of Section 29 of Contract Act would have come into play. In absence thereof, it cannot be said that the contract is vague and therefore not enforceable.

15. With regard to the contention of Defendant No. 2 that issue of tenancy was not framed though it was pleaded is concerned, the issue of tenancy can never be permitted to be raised just for the

sake of ouster of jurisdiction of Civil Court. There has to be some prima facie material in order to make the Trial Court to believe existence of issue of tenancy which requires to be determined by the competent authority and it is only thereafter it can be referred. The facts as they appear from record are so clear that there is no reason to accept the contention of Defendant No. 2 that he is the tenant in respect of the suit property. First of all, it is vaguely pleaded in the written statement that he is tenant of the suit property, and most importantly in his oral evidence before the Trial Court, he did not whisper anything about the same. Thus, there is complete absence of evidence on the part of Defendant No. 2 atleast to prima facie show that there is a genuine issue of tenancy involved in this case. In fact such plea of Defendant No. 2 gets falsified completely from his own document. The sale-deed executed by Defendant Nos. 4 and 5 in favour of Defendant No. 2 in no uncertain terms records that as far as suit property, the possession thereof would be given after decision of present suit. The said recital of sale document of Defendant No. 2 establishes the fact that he was not in possession of the suit property as the possession was never handed over to him by Defendant Nos. 4 and 5 and if Defendant No. 2 was tenant of the property, question of

introduction of such recital would never arise. Thus, there existed no issue of tenancy for its reference to Competent Authority.

16. Both Courts below have held that Plaintiff was able to prove his possession over the suit property. Since the said findings are in consonance with the evidence on record and not being perverse cannot be interfered with.

17. As far as objection to the maintainability of suit for injunction without seeking specific performance is concerned, there is no dispute about the fact that Respondent/Original Plaintiff filed independent suit for specific performance against Defendant Nos. 4 and 5 herein. Apart from this, Hon'ble Supreme Court in case of Anathula Sudhakar vs. P. Buchi Reddy (dead) by LRs and others, **2008 AIR SCW 2692**, has held that :-

"Where the Plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the Defendant, a suit for an injunction simplicitor will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against right owner."

Since Plaintiff succeeds in establishing his peaceful possession over suit property, may be pursuant to agreement to sale, he is within his right to protect the possession against any person who does not prove a better title, i.e. Defendant No. 2 herein this case. The title of Defendant No. 2 cannot be accepted on the basis of mutation entry, as it is settled position of law that the entries in revenue record are meant for fiscal purpose and do not create right in favour of any person. Thus, there is no substance in the objection raised with regard to maintainability of suit on this ground.

18. Finally, coming to the objection with regard to the jurisdiction of Civil Court to grant relief in respect of revenue entry is concerned, it is necessary to see as to the relief claimed by Plaintiff. As recorded above, the relief sought is not for alteration of the entry. No doubt it would be within jurisdiction of the authorities under Maharashtra Land Revenue Code to effect entries in revenue record and to cause alteration therein. Thus, it would not be permissible for Civil Court to direct deletion of revenue entry or substitution thereof. Exercise of such jurisdiction is prohibited under the code. That however, would not affect the inherent jurisdiction of a Civil Court to

declare any entry as incorrect/wrong. In the fact of the case, where there is evidence to show that infact Defendant No. 2 was never in possession of suit property, on the face of it the entry taken in the cultivation column is incorrect. The declaration given by learned Trial Court to that effect cannot be held to be without jurisdiction.

19. Once there is findings of fact recorded by the Trial Court and confirmed by First Appellate Court about Defendants trying to dispossess the Plaintiff from suit property, grant of perpetual injunction against them, requires no interference.

20. Having regard to the aforestated facts, this Court finds no substance in the challenge to the impugned judgments and decree and hence, appeal stands dismissed. Substantial questions of law are answered in negative.

21. Hence, Appeal stands dismissed.

(R. M. JOSHI)
Judge