

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 294 OF 1995

Mahadeo Haribhau Tayad (died)
Through its legal heirs

- 1-A. Kamalbai Mahadeo Tayad (wife)
Age: 55 years, Occu. Household
R/o. Ranjegaon, Post - Nathpur,
Tq. & Dist. Beed.
- 1-B. Manoj Mahadeo Tayad (Son)
Age: 34 years, Occu. Agriculture,
R/o. As above.
- 1-C. Sujeet Mahadeo Tayad (Son)
Age: 32 years, Occu. Agriculture,
R/o. As above.
- 1-D. Anita Chandrakant Nirmal (Daughter)
Age: 29 years, Occu. Household,
R/o. Limbaganesh, Tq. & Dist. Beed.
- 1-E. Sidharth Mahadeo Tayad (Son)
Age: 27 years, Occu. Agriculture,
R/o. Ranjegaon, Post - Nathpur,
Tq. & Dist. Beed.
- 2. Maruti s/o Haribhau Tayad
Died through his L.Rs.
- 2A. Mahendra s/o Maruti Tayad
Age: 58 years, Occ.: Labour,
- 2B. Harichandra s/o Maruti Tayad
Age: 40 years, Occ.: Labour,
- 2C. Sangita w/o Bhagwat Tekal,
Age: Major years, Occ.: Household,

All R/o: Ambika Nagar No. 2,
Bhimgarjana, Chal Road no. 16,
Vagle Estate, Thane,
Tq. & Dist.: Thane

2D. Meena w/o Barikrao Kasbe
 Age: Major years, Occ.: Household,
 R/o: Maida Post Ghatsavali,
 Dist: Beed ..Appellants

VERSUS

- 1) Narayan s/o Kadaji Tayad
 Died Through his L.Rs.
- 1-A) Yemubai w/o Narayan Tayad
 Age: 60 years, Occu. Agri. & Household,
 R/o at post Nathapur Ranjegaon,
 Tq. and Dist. Beed.
- 2) Kundalik s/o Kadaji Tayad
 Died through his L..Rs.
- 2A) Sumita w/o Kundalik Tayad
 Age: 65 years, Occ.: Household,
- 2B) Dattu s/o Kundalik Tayad
 Age: 46 years, Occ.: Agri.
- 2C) Dilip s/o Kundalik Tayad
 Age: 44 years, Occ.: Agri.
- 2D) Vinod s/o Kundalik Tayad
 Age: 29 years, Occ.: Agri.
- 2.E) Kamal D/o. Kundalik Tayad,
 @ Kamlabai W/o. Murlidhar Zine (Died)
 through his L'Rs
- 2.E 1) Murlidhar Machhindra Zine,
 Age: 45 years, Occu. Agri,
- 2.E2) Vijay Murlidhar Zine,
 Age: 20 years, Occu. Agri,

 Both R/o. Harshi Bk, Tq. Paithan
 Dist. Chhatrapati Sambhaji Nagar
- 2F) Mangal Sukhdeo Potphode,
 Age: 50 years, Occ.: Household,

(3)

R/o: Rakshas Bhavan,
Tq. Georai, Dist. Beed.

3. Sitaram s/o Kadaji Tayad,
Age : 35 years, Occupation – Agriculture,
R/o. As Above.
4. Bhagwat s/o Atamaram Abuj,
Age : 22 years, Occupation Agriculture
R/o. As above.
5. Alka w/o Muktaram Chavan,
Age 31 years, Occupation Agriculture
R/o. As above.

..Respondents

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Advocate for Appellants : Smt. C.S. Deshmukh
Advocate for Respondent Nos.1-A, 2-A to 2-F & 3 : Mr. S.S. Halkunde
Advocate for Respondent No.4 : Mr. N.J. Patil

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CORAM : S.G. CHAPALGAONKAR, J.

DATED : APRIL 24, 2025

JUDGMENT :

1. The plaintiffs/appellants impugn judgment and decree dated 21.06.1995 passed by learned District Judge, Beed in Regular Civil Appeal No.194 of 1994, thereby upholding judgment and decree dated 27.06.1994 passed by Civil Judge, Junior Division, Beed in Regular Civil Suit No.202 of 1990, by which the suit of plaintiffs seeking relief of declaration of ownership and perpetual injunction came to be dismissed. (Hereinafter, parties are referred by original status in the suit for the purpose of brevity and convenience).

2. Plaintiffs instituted suit claiming relief of declaration of ownership and perpetual injunction in respect of suit land bearing

Block No.164 situated at Village Ranjegaon, Taluka and District Beed. According to plaintiffs, the suit land was ancestral property. It was owned by their father Hariba, who expired on 14.05.1989. Thereafter, name of plaintiffs have been mutated in revenue record and they are in enjoyment and possession of property. Defendants, who are unconcern of suit property obstructed in their possession. Hence, they filed the suit.

3. Defendants filed written statement and admitted that Hariba was the owner of suit property and further pleaded that on 24.04.1975, Hariba executed registered sale deed in their favour and transferred ownership and possession of suit property to them. Since then, they are in enjoyment of property. The consolidation authorities while implementing scheme wrongly continued name of Hariba in record. Plaintiffs by taking disadvantage of aforesaid mistake raised claim for declaration of ownership and perpetual injunction. The Trial Court after considering rival submissions and evaluation of evidence dismissed the suit holding that plaintiffs failed to prove ownership and possession over suit property. On other hand, accepted case of defendants that they acquired ownership vide registered sale deed dated 24.04.1975 and were put in possession of suit land. Aggrieved plaintiffs filed appeal before the learned District Judge, who pleased to uphold the decree of Trial Court and dismissed appeal.

4. Plaintiffs filed present second appeal assailing concurrent judgments and decree. This Court admitted the appeal on 12.09.1995 as per following order :

*“Effect of the alleged admission of the appellant and whether decree in favour of the defendant for possession in suit filed by plaintiff was justified are substantial questions of law.
Admit.”*

5. The second appeal is taken up for final hearing on aforesaid substantial question. Smt. C.S. Deshmukh, learned advocate for appellants submits that appellants/plaintiffs have instituted suit for declaration of ownership and perpetual injunction. The Trial Court while dismissing suit, passed decree against plaintiff to hand over possession of suit land to defendants within 60 days from the date of order. The Appellate Court confirmed the same order. According to her, in absence of counter claim by defendants, the decree for possession could not have been passed. She would further submit that stray admission given by plaintiff that they obtained possession of suit land in pursuance to order of interim injunction passed in suit could not have been interpreted to mean that plaintiffs were not in possession of suit land at the time of institution of suit. She would further submit that there are no enabling provisions under the Civil Procedure Code that empowers Court to grant decree of possession in favour of defendants in suit instituted by plaintiffs seeking relief of declaration of ownership and perpetual injunction.

According to her, the Trial Court exceeded the jurisdiction. The Appellate Court failed to exercise jurisdiction in tune with the scheme of Order 41 Rule 33 of Civil Procedure Code. She would therefore urge that second appeal deserves to be allowed and decree of possession passed against plaintiffs is required to be quashed and set aside.

6. Per contra, Mr. Halkunde, learned advocate appearing for respondents supports judgment and decree as passed by the Courts. He submits that plaintiffs obtained possession of suit property in pursuance to interim injunction clamped against defendants. Finally defendants are held to be owner of suit property. Plaintiffs cannot retain possession obtained under interim order. The Trial Court rightly exercised inherent powers while directing restoration of possession to defendants.

7. Having considered submissions advanced, it can be observed that plaintiffs instituted suit without disclosing that on 24.04.1975, their father transferred suit property under registered sale deed to defendants. Defendants took specific plea as to acquisition of ownership and possession under aforesaid sale deed. The original sale deed is placed at Exhibit-68, which clearly shows that suit property was put into possession of defendants on the date of sale deed. Consequently, Mutation Entry No.366 was certified. Pertinently, plaintiff no.1 admitted in cross-examination about

execution of sale deed by plaintiff no.2 and his father in favour of defendants to satisfy financial crunch due to illness of his father. He admits that possession was delivered to defendants. He candidly admits that they obtained possession of suit land after grant of temporary injunction by Court in present suit. It is therefore evident that on the date of institution of suit, plaintiffs were neither in possession nor were they owners of suit land. Later on, plaintiffs secured possession of suit land under interim injunction, clamped against defendants in the suit. However on trial of suit, it is held that plaintiffs have no right/title in the suit property. Hence, Trial Court while dismissing suit, directed plaintiffs to restore possession of suit land to defendants. In this background, it is to be examined whether Courts are empowered to direct restoration of possession lost by defendants pursuance to interim order is the question for determination in this second appeal.

8. Section 144 of Civil Procedure Code empowers the Court to restitute party, who has lost possession or property under decree of Court, which is later on varied, reversed or set aside by Appellate Court. The Privy Council in the case of ***Alexander Rodger Charles Vs. Comptoir D'Escompte De Paris***¹ observed as under :

“It is the duty of the Court under Section 144 of the Civil Procedure Code to ‘place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed’.

1 17 ER 120

Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved.”

9. Similarly, the Hon’ble Supreme Court of India in the case of ***Binayak Swain Vs. Ramesh Chandra Panigrahi***² observed as under :

“The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from.”

10. Although in this case, Section 144 of Civil Procedure Code may not strictly apply but the aforesaid exposition of law by Privy Council as well as the Hon’ble Supreme Court of India clearly speaks out inherent duty of the Court to maintain fairness in the judicial process. Party to the suit, who received benefit of order which later on found unsustainable cannot be permitted to retain benefit received. Similarly, party who suffered loss has right of restitution of all his rights, which were lost under reversed order or decree. In present case, plaintiffs were successful to convince the Trial Court at

² (1966) 2 SCR 24, 27

interim stage as regards to their possession over suit property and under the garb of temporary injunction, they dispossessed defendants. As admitted by plaintiff during evidence, on the date of institution of suit, plaintiffs were not in possession of suit property. Defendants suffered dispossession deference to interim injunction clamped against them. Finally, plaintiffs are found disentitled for any relief. The plaintiff no.1 admitted parting of possession to defendants when sale deed was executed by his father. So also admits that got it back only under temporary injunction order passed in present suit. The admission of plaintiff is clear and unambiguous. As such, defendants have positively established their case of ownership and possession on the basis of registered sale deed as on date of institution of suit. In this background, the jurisdiction under Section 151 of Civil Procedure Code empowering exercise of inherit powers comes into play. The Courts are duty bound to exercise such powers to achieve ends of justice and fairness. The Trial Court as well as Appellate Court are therefore justified in exercising such powers in peculiar facts and circumstances of the case.

11. In result, second appeal sans merit. Hence, dismissed.

(S.G. CHAPALGAONKAR, J.)