



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.235 OF 1995
WITH
CIVIL APPLICATION NO.3798 OF 1995**

- 1) Gayabai W/o Yadav Phukat,
Deceased through Lrs,
- 1/1) Dnyaneshwar S/o Yadav Phukat,
Age Major, Occu: Agriculture,
- 1/2) Nanda W/o Sanjay Mhaske,
Age Major, Occu: Agriculture,
All R/o Kumbhari, Taluka Bhokardan,
Dist. Jalna.

..Appellants
(Ori. Plaintiffs)

Versus

1. Makarabai w/o Yadav Phukat,
Age 51 years, Occupation Agriculture,
R/o. Kumbhari, Taluka Bhokardhan,
District Jalna.
2. Deorao s/o Bajaba Phukat,
Age 56 years, Occupation Agriculture,
R/o. Kumbhari, Taluka Bhokardhan,
District Jalna.

..Respondents
(Ori. Defendants)

...

Mr. H. B. Nandagavle h/f Mr. V. G. Sakolkar, Advocate for the Appellants.

Mr. Swapnil Joshi h/f M/s. J. P. Legal Associates, Advocate for the Respondent No.2.

Respondent No.3 is served.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 10th MARCH, 2025.**

ORDER:-

1. The appellant/original plaintiff impugns judgment and decree dated 30.01.1995 passed by 2nd Additional District Judge, Jalna in Regular Civil Appeal No.109/1993, thereby upholding judgment

and decree dated 31.07.1993 passed by Civil Judge, Junior Division, Bhokardan in Regular Civil Suit No.38/1983, by which suit of appellant/plaintiff has been dismissed. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The plaintiff instituted Regular Civil Suit No.38/1983 before Civil Judge, Junior Division at Bhokardan seeking relief of declaration of ownership in respect of suit land, declaration that sale deed executed by defendant no.1 in favour of defendant no.2 is nominal and ineffective and perpetual injunction against defendants from obstructing or interfering in peaceful possession of plaintiff over suit property. The plaintiff contents that she is wife of defendant no.1-Yadav. On 15.03.1982, defendant no.1 entered into an agreement to sale in her favour in respect of land Gut No.316 situated at village Kumbhari. She was immediately put into possession. Since then, she was cultivating land. In terms of oral agreement to sale, defendant no.1 executed registered sale deed dated 08.09.1983 in her favour. When she made an application for mutating her name, she came to know that defendant no.1 had already executed registered sale deed dated 24.05.1982 in favour of defendant no.2, who is another wife of defendant no.1.

3. The defendant no.2, who is wife of defendant no.1-Yadav refuted contentions of plaintiff and claimed that she is owner and possessor of suit land on the basis of registered sale deed dated 24.05.1982. The plaintiff does not have any right or interest in suit property. The sale deed dated 08.09.1983 being subsequent to sale deed of defendant no.2 is void and ineffective.

4. The Trial Court framed issues based on pleadings of parties, recorded evidence and concluded that plaintiff failed to prove oral agreement to sale dated 15.03.1982 or that she was put into possession in pursuance to such agreement to sale. The defendant no.2 proved her ownership and possession on the basis of sale deed dated 24.05.1982. Consequently, dismissed the suit. Aggrieved plaintiff filed Regular Civil Appeal No.109/1993 before District Judge, Jalna, which is dismissed, upholding judgment and decree of Trial Court.

5. The present Second Appeal has been admitted vide order dated 30.11.1995, which reads as under:

“ Heard Mr. Sakolkar, learned counsel for the Appellant and Mr. Naik, learned counsel for the Respondent No.1.

2. Mr. Naik strongly opposed admission of the appeal. There, however involves substantial question of law when evidence between the parties have not been appreciated by raising specific issues in regard to the dispute between the parties.

3. Admit.

4. Notice.”

6. In pursuance to aforesaid order only issues as to the appreciation of evidence by raising specific issue as regards to the dispute between parties has been framed.

7. Mr. Nandagavle, learned Advocate appearing for the appellants submits that both Courts below failed to appreciate pleading and material placed into service on behalf of plaintiff and also frame appropriate issues in consonance with pleadings of parties. He submits that oral evidence adduced by plaintiff clearly shows that on 15.03.1982, defendant no.1 had orally agreed to sell suit land to her and put her into possession. Later on, he executed registered sale deed dated 08.09.1983. However, false, sham and nominal sale deed dated 24.05.1982 has been executed by defendant no.1 in favour of defendant no.2 to frustrate claim of plaintiff. Such a sale deed is not binding on right of plaintiff. He would submit that name of defendant no.2 was never entered into cultivation column in pursuance to sale deed, which suggests that sale deed dated 24.05.1982 is sham and bogus. Both Courts below have erroneously discarded plaintiff's case only on the ground that reference of oral agreement to sale is not made in sale deed executed by defendant no.1 in favour of plaintiff. Such approach of Courts below is perverse.

8. Per contra, Mr. Joshi, learned Advocate appearing for defendant no.2 supports judgment and decree. He points out that

plaintiff was second wife of defendant no.1-Yadav. The plaintiff had earlier married with one Pandurang and she had two children from such marriage. During subsistence of marriage with defendant no.2, she had developed relations with defendant no.1. Subsequently, she filed suit for maintenance. Later on, compromise took place in which plaintiff abandoned her claim as to matrimonial relationship with defendant no.1. Undisputedly, defendant no.2 is wife of defendant no.1 and he executed registered sale deed dated 24.05.1982 in favour of defendant no.2 thereby transferred ownership and possession in her favour. The subsequent sale deed alleged to have been executed by defendant no.1 in favour of plaintiff is of no consequence. Both Courts below have concurrently held that plaintiff failed to prove oral agreement to sale dated 15.03.1982 and claim as to the possession over suit property. According to him, no substantial question of law arises for consideration in this Second Appeal, since issues on controversy have been appropriately framed and dealt by Trial Court. The Appellate Court has also framed necessary points for consideration and recorded findings against plaintiff. Therefore, he urges to dismiss Second Appeal.

9. Having considered submissions advanced and on perusal of record, it is evident that defendant no.2 is wife of defendant no.1-Yadav. They are residing together. During subsistence of their

marriage, plaintiff, who was already married with one Pandurang and having two children, developed relations with defendant no.1. Later on, plaintiff instituted proceeding for maintenance against defendant no.1-Yadav. She received amount of Rs.500/- from defendant no.1 as maintenance. Later on, defendant no.1 filed Civil Suit No.17/1983 against plaintiff for cancellation of maintenance, in which settlement has been arrived. The deed of settlement dated 09.09.1983 is placed at Exhibit-65 on record of suit. It records that matrimonial relationship between plaintiff and defendant no.1-Yadav has been terminated by registered divorce deed executed by them.

10. It is matter of record that registered sale deed dated 24.05.1982 has been executed by defendant no.1 in favour of defendant no.2. It stipulates about payment of consideration to defendant no.1 and delivery of possession to defendant no.2. In this background, subsequent sale deed dated 08.09.1983 executed by defendant no.1 in favour of plaintiff in respect of same property would not pass on any title in favour of plaintiff. The Courts below observed that with intention to cover up such difficulty, plaintiff developed story of oral agreement to sale dated 15.03.1982 by defendant no.1 and delivery of possession of suit land to her. The Courts have further observed that when defendant no.1 and plaintiff were litigating against each other, possibility that

defendant no.1 will enter into an oral agreement to sale dated 15.03.1982 and deliver possession of his agriculture land in favour of plaintiff cannot be countenanced. Although plaintiff has recorded oral evidence of witnesses in support of oral agreement to sale and delivery of possession, there is no stipulation in that regard in sale deed dated 08.09.1983. Further Appellate Court observed that sale deed dated 08.09.1983 stipulates about delivery of possession on the date of sale deed alongwith standing crops. This statement is inconsistent with the case of plaintiff that she was put into possession on the basis of oral agreement to sale dated 15.03.1982. In result, both Courts below have concurrently held that plaintiff could not prove oral agreement to sale dated 15.03.1982. On other hand, defendant no.2 proved execution of sale deed dated 24.05.1982. Eventually, subsequent sale deed dated 08.09.1983 executed by defendant no.1 in favour of plaintiff would not confer any title upon her.

11. Although it is argued on behalf of plaintiff that appropriate issues were not framed by Trial Court and controversy is not appreciated on crucial issue, perusal of judgment of Trial Court shows that issues on all relevant aspects were appropriately framed. The learned Advocate appearing for the appellants could not demonstrate omission to frame crucial issue by Trial Court on any particular point. Similarly, Appellate Court appropriately

framed points for consideration. Both Courts below have exhaustively dealt with controversial issues and recorded concurrent findings of facts. At this stage reference can be given to observations of Supreme Court of India in case of ***Gurdev Kaur and Ors. Vs. Kaki and Ors.***¹, which reads as under:

“Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble".”

12. In light of aforesaid observations, there is no reason to interfere in concurrent findings of fact recorded by Courts below.

13. Consequently, Second Appeal stands dismissed.

14. In view of dismissal of Second Appeal, nothing survives in Civil Application and same is accordingly disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025

¹ AIR 2006 SC 1975.