



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**22 SECOND APPEAL NO. 484 OF 1995
WITH
CIVIL APPLICATION NO. 7298 OF 1995
IN SA/484/1995**

Nawnath s/o Bapurao Waghmode.
Age; 30 years Occ. Agriculture,
R/o; Ghatnandur, Tq. Boom,
District Osmanabad.

...APPELLANT
(Original Plaintiff)

VERSUS

01. Vimalabai W/o Bhagwan Kawale,
Age; 36 years, Occ. Agriculture,
R/o; Chandwad, Tq. Bhoom,
District Osmanabad.

02. Baburao S/o. Bhagwan Kawale,
Age; 12 years, Minor U/g. Of
Vimalbai W/o. Bhagwan Kawale,
R/o; Chandwad, Tq. Bhoom,
District Osmanabad.

03. Bhagwan S/o Sopan Kawale,
Age; 41 years, Occ; Agriculture,
R/o; Chandwad, Tq. Bhoom,
District Osmanabad.

04. Bankat S/o Sopan Kawale,
Age; 35 years, Occ. Agriculture,
R/o; Chandwad, Tq. Bhoom,
District Osmanabad.

...RESPONDENTS
(Original Defendant 1 to 3)

...
Advocate for Appellant : Smt. M.A. Kulkarni.
Advocate for Respondent Nos. 1 to 3 : Mr. U.R. Awate i/by Mr. S.B.
Talekar
Respondent No., 4 served.

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**CORAM : S. G. CHAPALGAONKAR, J.
Dated : 12.03.2025**

ORAL JUDGMENT :-

1. Heard Mrs. Kulkarni, learned Advocate appearing for the appellant and Mr. U.R. Awate, learned Advocate for Respondent Nos. 1 to 3.

2. Present second Appeal has been admitted vide order dated 08.12.1995 by framing following substantial question of law :

"There involves substantial question of law when the lower Appellate Court failed to raise points for determination, resulting in miscarriage of justice in appreciating the evidence."

3. Appellant/plaintiff contends that defendant No. 1 Bhagwan s/o Sopan Kawale executed registered sale deed dated 10.09.1980 in his favour in respect of suit property. On basis of sale deed, he acquired title. Defendants are obstructing his possession over the suit property, therefore, he sought decree of declaration of ownership and perpetual injunction. In alternative, for possession of suit property.

4. Trial Court framed issues, recorded evidence of parties and concluded that plaintiff proved that he has title of suit land under registered sale deed dated 10.09.1980, but he is not in possession, therefore passed decree directing defendant Nos. 1 to 3 to hand over possession to the plaintiff.

5. Aggrieved defendant Nos. 2 & 3 filed Regular Civil Appeal No. 169 of 1986 before District Judge, Osmabad, who reversed decree, eventually, dismissed suit vide judgment and order dated 19.06.1995.

6. Mrs. Kulkarni, learned Advocate appearing for appellant submits that in fact defendants have obtained collusive decree dated 05.09.1980, thereafter sale deed came to be executed in favour of plaintiff. Collusive decree between defendants would not bind his rights. She

submits that without framing proper points for consideration under order 41 Rule 33 of Code of Civil Procedure the first appellate Court reversed decree, therefore, urges for allowing Second Appeal.

7. Per Contra, Mr. Auti, learned Advocate appearing for respondents/defendants supports impugned judgment and decree passed by appellate Court. He points out that plaintiff has not claimed any relief as against decree passed in RCS N O. 133 of 1980 by which defendant No. 1 had lost his right in respect of suit property, therefore, subsequent sale deed dated 10.09.1980 would not confer any title on plaintiff.

8. Having considered submissions advanced, it can be observed that RCS No. 133 of 1980 was decreed on 05.09.1980. Under this decree partition between defendants was given effect and allotment of suit lands to the share of defendant Nos. 2 and 3 was endorsed. As such they acquired ownership and possession. As per compromise decree defendant No. 1 had not retained any right qua suit property. On face of such decree, sale deed dated 10.09.1980 has been executed by defendant No. 1 in favour of plaintiff. Apparently defendant No. 1 had no right to deal with suit property as defendant Nos. 2 and 3 had acquired exclusive ownership under decree passed by Competent Court of Civil jurisdiction. If plaintiff had any grievance as regards to the decree in RCS No. 133 of 1980, he could have claimed relief against such decree. But from reading of plaint, it does not appear that plaintiff raised any such claim. It is possible that defendant No. 1 has acted in collusion with other defendants while entering into compromise and getting decree passed in RCS NO. 133 of 1980. However, subsequent sale deed executed by defendant No. 1 would confer no title upon plaintiff. Appellate Court is therefore, justified in dismissing suit by reversing decree of trial Court.

9. So far as, contention that appellate Court failed to frame points for consideration in tune with Order 41 Rule 33 of the CPC, it can

be observed that in absence of any prejudice on account of non framing of points for consideration, decree as passed by appellate Court cannot be disturbed.

10. Perusal of judgment of appellate Court shows that crucial issue has been considered in light of evidence adduced by parties as per facts and law as applicable. In present case entire evidence has been marshaled while reaching to final conclusion. Therefore, even it is presumed that requisite points for consideration were not framed, it appears that contentions of parties and relevant points are dealt with in detail. Therefore, no prejudice appears to have been caused to appellant.

11. In that view of the matter, Second Appeal sans merit. Hence dismissed.

12. In view of disposal of Second Appeal pending Civil Application has become infructuous and is disposed off.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/