



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.97 OF 2025
WITH
CIVIL APPLICATION NO.2494 OF 2025**

1. Vinayak Jagannath Shinde,
Age: 67 years, Occupation: Agriculture
R/o: Apegaon, Taluka Ambajogai, Dist. Beed.
 2. Omprakash Jagannath Shinde,
Age: 63 years, Occupation: Agriculture,
R/o: Apegaon, Taluka Ambajogai, Dist. Beed. ..Appellants
(Original Plaintiffs)
- Versus
1. Nanasaheb Narayan Kale,
Age: 75 years, Occupation: Nil,
R/o: Apegaon, Taluka Ambajogai, Dist. Beed.
 2. Arvind Nanasaheb Kale,
Age: 37 years, Occupation: Agriculture,
R/o: Apegaon, Taluka Ambajogai, Dist. Beed.
 3. Sudarshan Kishanrao Shinde,
Age: 45 years, Occupation: Agriculture,
R/o: Apegaon, Taluka Ambajogai, Dist. Beed.
 4. Shrihari Dattatray Shinde,
Age: Major, Occupation: Agriculture,
R/o: Apegaon, Taluka Ambajogai, Dist. Beed. ..Respondents
(Original Defendants)

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Mr. R. V. Dasalkar, Advocate for Appellants.

Mrs. Anjali Bajpai Dube, Advocate for Respondent Nos.1 and 2.

Mr. P. P. More, Advocate for Respondent Nos.3 and 4.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 25th MARCH, 2025.**

ORDER:-

1. The appellants/original plaintiffs impugn judgment and decree dated 01.01.2025 passed by District Judge, Ambajogai in

Regular Civil Appeal No.62/2016, thereby upholding judgment and decree dated 28.03.2016 passed by Civil Judge, Junior Division, Ambajogai in Regular Civil Suit No.135/2009, by which suit of plaintiffs to the extent of relief of declaration of ownership has been decreed and relief as to perpetual injunction is declined. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The appellants/plaintiffs filed Regular Civil Suit No.135/2009 before Civil Judge Junior Division, Ambajogai seeking relief of declaration of ownership and perpetual injunction in respect of land, which is part and parcel of Survey No.1/9. According to plaintiffs, it is their ancestral properties. During partition, plaintiff no.1 received 41R land from Eastern side and plaintiff no.2 received 1H 60R land from Western side. Since then, they are enjoying ownership and possession over property. However, on 11.07.2009, defendants attempted to erect tin shed over suit property. They denied title of plaintiffs and attempting to raise construction over suit property.

3. The defendant nos.1 to 4 filed written statement and pleaded that plaintiff no.2 put them into possession of suit property on the basis of oral agreement to sale. The plaintiff no.2 was in need of money as he was indebted and also for marriage expenses of his daughter. Eventually, he received sum of Rs.68,000/- from

defendant nos.1 and 2 and put them in possession of 66 X 66 sq. ft. plot. The plaintiffs further assured to execute registered sale deed, but failed to execute the same. The defendant nos.3 and 4 also took plea that plaintiff no.2 received amount of Rs.1,20,000/- and Rs.90,000/- respectively from defendant nos.3 and 4 and put them in possession of suit plot, but failed to execute sale deed. According to them, they are in lawful possession of suit property and present suit is filed only in order to avoid execution of sale deed.

4. The Trial Court framed issues based on pleadings of the parties, recorded evidence and finally decreed suit of plaintiffs to the extent of declaration of ownership, however, refused to grant decree of perpetual injunction as defendants were found in possession of property. Aggrieved plaintiffs filed Regular Civil Appeal No.62/2016 before District Judge at Ambajogai. However, same came to be dismissed vide judgment and decree dated 01.01.2025, upholding decree as passed by Trial Court.

5. Mr. Dasalkar, learned Advocate appearing for appellants submits that both Courts have concurrently held that appellants/plaintiffs are owners of suit property. The defendants could not prove oral agreement to sale as pleaded by them. In that view of matter, there was no reason for rejecting claim of plaintiffs for grant of consequential reliefs of perpetual injunction after upholding plaintiffs' title. Mr. Dasalkar would submit that

plaintiffs' ownership as well as possession is consistently depicted in revenue record. However, only on the basis of so called panchanama recorded by Revenue Officer, Courts accepted defendants' possession. He would, therefore urge to admit Appeal on proposed substantial questions of law.

6. Per contra, Mrs. Bajpai-Dube, learned Advocate appearing for respondent nos.1 and 2 and Mr. More, learned Advocate appearing for respondent nos.3 and 4 supports impugned judgment and decree contending that concurrent findings of possession of defendants over suit property has been recorded by fact finding Courts. The finding is based on appreciation of evidence. Hence, do not require interference in this Second Appeal.

7. Having considered submissions advanced and after going through reasoning adopted by Courts below, it is undisputed that plaintiffs are owners of suit property. Both the Courts have, therefore, granted declaration to that effect. The dispute in this Appeal is only as regards to the relief of perpetual injunction, which has been declined by both Courts. Essentially, relief of perpetual injunction can be granted on the basis of fact as to possession of parties. Although plaintiffs are owners of suit property, it was for them to establish their possession to claim decree of perpetual injunction against defendants. In present case, defendants have specifically pleaded that plaintiffs entered into

oral agreement to sale and put them into possession over suit plot. It has been brought on record that plaintiff no.2 was indebted and in need of money for marriage expenses of his daughter. In that eventuality, he entered into transaction with defendants. The defendants and their witnesses deposed about handing over of possession of suit plots by plaintiff no.2.

8. Apart from aforesaid evidence, a panchanama carried by Circle Officer depicting possession of defendant nos.1 and 2 with construction of tin shed has been brought on record. The Trial Court as well as Appellate Court on appreciation of aforesaid evidence, recorded finding of fact that defendant nos.1 and 2 and defendant nos.3 and 4 are in possession of suit plots, which are part of 1H 60R belonging to plaintiff no.2. On the other hand, plaintiffs failed to bring on record evidence depicting their possession over suit property. In that view of matter, concurrent findings of fact based on appreciation of evidence appears to have recorded by fact finding Courts. In absence of proof of their possession, relief of perpetual injunction as claimed by plaintiffs has been rightly declined. In spite of aforesaid findings, plaintiffs did not ask for relief of possession. At this stage reference can be given to the observations of Supreme Court of India in case of ***Gurdev Kaur and Ors. Vs. Kaki and Ors.***¹, which reads thus:

¹ AIR 2006 SC 1975.

“68. *The analysis of cases decided by the Privy Council and this Court prior to 1976 clearly indicated the scope of interference under Section 100 C.P.C. by this Court. Even prior to amendment, the consistent position has been that the Courts should not interfere with the concurrent findings of facts.*

69. *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."*

9. In light of aforesaid exposition of law, there is no reason to interfere in findings of fact or even re-appreciation evidence on record. In result, no substantial question of law arises for consideration in this Second Appeal. Hence, Second Appeal stands dismissed.

10. In view of dismissal of Second Appeal, pending Civil Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE