



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

SECOND APPEAL NO. 426 OF 2005

Bhivsen S/o Yadavrao Bhatane,
Died L.Rs.

1. Bhivrabai w/o Bhivsan Bhatane,
age 62 years, Occu. : Household,
2. Vishwanath S/o Bhivsan Bhatane,
Since deceased through his L.Rs.
- 2A Mayadevi w/o Vishwanath Bhatane,
Age : 50 Years, Occu. : Household,
R/o Wale English School,
Khadgaon Road, Latur.
- 2B Akshay s/o Vishwanath Bhatane,
Age : 29 Years, Occu. : Agril.,
R/o Wale English School,
Khadgaon Road, Latur.
3. Nagnath S/o Bhivsan Bhatane,
Age : 33 Years, Occu. : Service,
R/o Raiwadi, Tq. Chakur,
District Latur.
4. Shailubai w/o Janardhan Kendre,
Age : 40 Years, Occu. : Household,
R/o Kendrewadi, Tq. Ahmedpur.
5. Nilubai w/o Sugriv Karad,
Age : 37 Years, Occu. : Household,
R/o Raiwadi, Tq. Chakur.
6. Kalubai w/o Vaijinath Chate,
Since deceased through her L.Rs.

6A Tukaram s/o Vaijnath Chate,
Age : 38 Years,

6B Dnyanoba s/o Vaijnath Chate,
Age : 35 Years,

Both R/o Hadoli, Post Satala,
Tq. Chakur, Dist. Latur.

.. Appellants

Versus

1. Ram s/o Sambha Murkute,
Age : 68 Years, Occu. : Agril.,
Since deceased through his L.Rs.

1A Wanchabai w/o Ram Murkute,
Age : 85 years, Occu. : Household,
R/o Raywadi, Tq. Chakur,
Dist. Latur.

1B Muktabai w/o Rukmaji Nagargoje,
Age : 36 Years, Occu. : Household,
R/o Godhala, Tq. Renapur,
Dist. Latur.

1C Vanita w/o Dnyanoba Nagargoje,
Age : 31 Years, Occu. : Household,
R/o Ramwadi, Tq. Chakur,
Dist. Latur.

2. Madhav s/o Ram Murkute,
Age : 45 Years, Occu. : Agril.,
Since deceased through his L.Rs.

2A Kerba s/o Madhav Murkute,
Age : 38 Years, Occu. :

2B Bhagwan s/o Madhav Murkute,
Age : 34 Years, Occu. :

2C Indubai w/o Madhav Murkute,
Age : 60 Years, Occu. :

All R/o Raywadi, Tq. Chakur,
Dist. Latur.

3. Ganu s/o Ram Murkute,
Age : 32 Years, Occu. :
R/o Raiwadi, Tq. Chakur,
Dist. Latur. .. Respondents

Shri D. Y. Bhadekar and Shri R. R. Suryawanshi, Advocates for
the Appellants.

Shri B. R. Kedar, Advocate h/f Shri S. B. Madde, Advocate for the
Respondent Nos. 1/B, 1/C, 2A and 2/B.

**WITH
CIVIL APPLICATION NO. 3143 OF 2005
IN
SECOND APPEAL NO. 426 OF 2005**

- Bhivsen S/o Yadavrao Bhatane,
Died L.Rs.
1. Bhivrabai w/o Bhivsan Bhatane,
and others .. Applicants
- Versus**
1. Ram s/o Sambha Murkute,
Since deceased through his L.Rs.
- 1A Wanchabai w/o Ram Murkute,
and others .. Respondents

Shri D. Y. Bhadekar and Shri R. R. Suryawanshi, Advocates for
the Applicants.

Shri B. R. Kedar, Advocate h/f Shri S. B. Madde, Advocate for the
Respondent Nos. 1/B, 1/C, 2A and 2/B.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 13.10.2025

JUDGMENT PRONOUNCED ON : 06.11.2025

JUDGMENT :

. Heard both sides finally.

2. Appellant who is original plaintiff is challenging judgment and decree dated 31.07.2003 passed by the Trial Court in R.C.S. No. 134 of 2002, which is further confirmed by the lower Appellate Court in R.C.A. No. 127 of 2003 vide judgment dated 28.04.2004. He is non suited for relief of declaration and injunction. Parties are referred to by their original status in the suit.

3. Second appeal was admitted on following substantial questions of law vide order dated 08.09.2005.

i) Whether the Courts below have committed serious error of law in not recording the findings with regard to the claim of the plaintiff that he had become owner of the property by virtue of sale deed dated 05.03.1994 and a correction deed dated 27.06.1994?

4. The controversy pertains to land gut No. 94 admeasuring 1H 34R which was originally belonging to the respondents. The total area of land was 3H 10R. Out of that respondent No. 1 sold 1H 32R to the plaintiff vide registered sale deed dated 05.03.1994. The parties sought correction to the Eastern side boundary of suit property. A registered correction deed was executed on 27.06.1994. It is contended by the plaintiff that the

defendants obstructed his possession and he was required to file R.C.S. No. 134 of 2002 for declaration and injunction.

5. The defendants contested the suit by taking a plea that it was not out and out sale, but a money lending transaction. The sale deed was nominal one and executed towards security. The defendants claimed to be in possession of the suit land. It is further contended that the defendant No. 1 partitioned the suit land by allotting the shares to the defendant Nos. 2 and 3. The mutation entry No. 128 was recorded. It is disclosed that the successor in title of the defendant had preferred R.C.S. No. 194 of 2021 for declaration and injunction in respect of self same subject matter and sale transaction, which is pending.

6. Both parties led oral evidence. The original sale deed dated 05.03.1994 and correction deed dated 27.06.1994 were not produced on record. However, with the list of document at Exhibit 04, plaintiff produced certified copies of both the documents along with the plaint.

7. Trial Court recorded that plaintiff failed to produce original documents on record. The possession was all the while held to be with the defendants. The plaintiff did not disclose four boundaries of the suit land. Hence the theory of execution of nominal sale deed towards security was accepted and the suit was dismissed. Appellate Court, recorded that no court fees for the relief of declaration was paid, four boundaries were not

mentioned and the possession all the while was with the defendants, hence confirmed the decision of the trial Court. However, the Appellate Court held that the plaintiff has made out a *prima facie* case for his title over the suit land.

8. Learned counsel for the appellant submits that both Courts below committed grave error of jurisdiction in dismissing the suit because the certified copies of the relevant document were on record before the Trial Court and the admissible evidence has been discarded. It is further contended that in Civil Application No. 3141 of 2005 filed under Order XLI Rule 27 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the “C.P.C.”) original documents are produced on record.

9. It is further submitted that the lower Appellate Court has rightly observed that there are no material particulars to corroborate the plea of money lending transaction and security. It is further submitted that the respondents themselves have filed R.C.S. No. 194 of 2021 which fortifies the execution of the sale deed in question. It is further submitted that present suit can be remanded to be tried along with the above suit. It is further submitted that trial court committed perversity in holding that the sale deed was nominal and it was executed towards security.

10. Mr. Kedar, learned counsel for the respondents repels the

submissions and supports the concurrent findings of facts. It is submitted that trial Court has rightly arrived at a conclusion that possession was all the while with the defendants and it was not out and out sale. It is further submitted that suit land was mortgaged with District Central Cooperative Bank. The categorical findings are recorded by both the Courts below which cannot be disputed. It is further submitted that the original sale deeds cannot be taken into account because those were not submitted along with plaint. On the basis of reply, application for additional evidence is sought to be rejected. Lastly it is submitted that plaintiff failed to lead evidence and prove the contents and the execution of the sale deed as per Sec. 61, 62, 63 and 64 of the Evidence Act.

11. I have considered rival submissions of the parties. I have gone through the original record with the assistance both the learned counsels. The plaintiff has filed Civil Application No. 3143 of 2005 for production of original sale deed as well as correction deed which are registered documents. The application for additional evidence was directed to be decided at the time of final hearing of the second appeal. The application is opposed by affidavit in reply filed by the respondents.

12. The record reveals that list of document at Exhibit 04 was filed along with the plaint and in the said list certified copies of sale deed dated 05.03.1994 as well as correction deed dated 27.06.1994 were produced before the trial Court. The defendant

No. 1 - Madhav is the attesting witness who has admitted execution of sale deed and its registration. No plea is taken by the defendants that the sale deed was got executed fraudulently. Their plea all the while is that it was a nominal transaction executed towards the security for the money lending. It has been brought on record that R.C.S. No. 194 of 2021 was filed by the heirs of the defendants in respect of the self same suit land as well as the sale deed for the relief of declaration and injunction.

13. A certified copy of plaint of R.C.S. No. 1994 of 2021 shows that the execution of the sale deed has been categorically stated in the plaint. The revenue record and the proceedings before the revenue court have also been referred in the plaint. The plaintiffs therein are contended to be in possession of the suit land. The sale deed has been challenged on the ground that it was nominal and illegal. In this situation the objection raised by the learned counsel Mr. B. R. Kedar that original sale deed was not produced on record and the contents thereof have not been proved loses the significance. The defendants and their heirs have admitted the execution as well as contents of the sale deed. Therefore further independent proof of the document is not required.

14. The defendant No. 1 is the attesting witness of the sale deed. The certified copies were already on record. Both the Courts below have overlooked Sec. 73 and 77 of the Evidence Act. Learned counsel Mr. Bhadekar has rightly placed on record the

judgment of the Supreme Court in the matter of Appaiya Vs. Andimuth @ Thangapandi and others reported in *2023 AIR (SC) 4810* laying down that certified copy is admissible in the evidence. I have gone through para No. 22 and 30 of the judgment. Under these circumstances, I find that both the Courts below ought to have held that the plaintiff is the owner of the suit land.

15. Under peculiar facts and circumstances of the case when already certified copies of relevant documents are on record and those are admissible in evidence, there is no need to decide the application of additional evidence independently. The said application contains reasons showing that application was made on 28.07.2004 for the original documents and thereafter those were issued to the plaintiff. At the cost of repetition I have to observe that both Courts below ignored legally admissible evidence on record. The certified copy confirms with the original. For the reasons stated above I find that Civil Application No. 3143 of 2005 is disposed of.

16. The plaintiff is entitled to have declaration that he has acquired title vide sale deed dated 05.03.1994. Though court fees for the relief of declaration has not been paid, the learned counsel for the appellants has shown the readiness of his clients to pay the court fees in that regard. The substantial question of law has to be answered in favour of the appellants.

17. Both Courts below observed that four boundaries of the

suit land have not been mentioned in the plaint. The sale deed discloses the four boundaries and no grievance is made in that regard by heirs of the defendants in R.C.S. No. 194 of 2021. The parties have understood and identified the subject matter. I do not find that any prejudice is caused to the defendants by not disclosing the four boundaries. The plaintiff cannot be non suited for not describing the four boundaries.

18. The defendants have also raised objection regarding non joinder of necessary parties. It is disclosed that the suit land was mortgaged by the defendants. The District Central Cooperative Bank, is contended to be necessary party. The defendants have not provided material particulars regarding the mortgage. No relief as such is prayed against the bank. The plaintiff is not claiming possession. The objection for non joinder of necessary party is not sustainable.

19. The Trial Court held that the transaction in question between the parties is not out and out sell, but it was money lending transaction. As the possession has been retained by the defendants, trial court is prompted to draw a conclusion that its a mortgage. However, the lower Appellate Court did not concur with the finding. The defendants failed to provide material particulars of the money lending and, therefore, the plea was not accepted. I have independently assessed the material on record in this regard. For the following reasons I am of the considered view that its not a money lending transaction.

- (i) The recitals of sale deed dated 05.03.1994 and correction deed do not spell out any mortgage or money lending transaction.
- (ii) There was no need to execute and register the correction deed, had the transaction been a nominal sale only.
- (iii) The defendants have not led evidence regarding hand loan taken from the plaintiff and its repayment.

20. Learned counsel for the respondents sought reliance on the judgment of the Coordinate Bench of this Court in the matter of Shankarlal Ganulal Khandelwal since deceased through L.Rs. Rameshchandra Shankarlal Khandelwal Vs. Balmukund Surajmal Bharuka since deceased through L.Rs. Anil Balmukund Bharuka and others reported in *1999(2) Mh.L.J. 569*. I have gone through para Nos. 4, 7, 9 and 13. In that case sale deed was produced on record and it was exhibited. The facts are distinguishable. The judgment will not help the respondents. Further reliance is placed on the judgment of the Supreme Court in the matter of Union of India Vs. Abraham Uddin and another reported in *(2012) 8 SCC 148*. The parameters for invoking jurisdiction of Order XLI Rule 27 of the C. P. C. have been laid down by the Apex Court, which cannot be disputed. However, I have already observed that in the case at hand the application preferred by the plaintiff U/O XLI Rule 27 of the C. P. C. has become redundant because already the certified copies of the relevant documents are placed on record and the probative value of those documents was not taken into account by the courts below, which is held to be an error of jurisdiction.

21. In the present suit no relief of possession has been claimed by the plaintiff. The material on record indicates that the defendants are in possession. It would be open for the plaintiff to take recourse of law to secure the possession. Both the Courts below have committed perversity in dismissing the suit. I, therefore, pass following order.

O R D E R

- A. Second appeal is allowed partly.
- B. The judgment and decree dated 31.07.2003 passed in R.C.S. No. 134 of 2002 by Civil Judge Junior Division, Chakur as well as judgment and decree dated 28.04.2004 in R.C.A. No. 127 of 2003 passed by Adhoc Additional District Judge, Latur are quashed and set aside.
- C. R.C.S. No. 134 of 2002 shall stand decreed only to the extent of declaration that the plaintiff is owner of the suit land.
- D. There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

bsb/Oct. 25