



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

918 SECOND APPEAL NO. 484 OF 2014

1. Bhaurao Jayaram Hinge (deceased)
1-A Smt. Dwarkabai Bhaurao Hinge
Age : 73 years, Occu : Household
- 1-B Sau. Vijaya Ashok Bhamre
Age : 56 years, Occu : Medical Practitioner
- 1-C Vikasrao Bhaurao Hinge
Age : 54 years, Occu : Service
- 1-D Sau. Vaishali Nitin Deore
Age : 49 years, Occu : Service
All R./o. 44/C Samtanagar,
Savedi, Ahmednagar
District Ahmednagar
2. Pushpa Shivajirao Patil.
Age : 61 years, Occu: Household,
R/o. Krushi Mahavidyalaya, Pune
3. Ramesh Pandurang Purkar,
Age : 54 years, Occu: Agriculture
4. Walmik Gangadhar Purkar,
Age : 52 years, Occu : Agriculture,
5. Vishnu Sakahari Purkar.
Age : 47 years, Occu: Agriculture
R/Nos.3 to 5 R/o Visapur,
Tq. Yeola, District Nashik
6. Raju Shridhar Gaikwad,
Age : 47 years. Occu : Service,
R/o. Krushi Vidyapeeth Rahuri,
Tq. Rahuri, Dist. Ahmednagar.
7. Manisha Himmatrao Patil,
Age: 61 years. Occu : Household,
R/o. Krushi Mahavidyalaya, Badnapur,

Tq. Badnapur, Dist Jalna

8. Indubai Devidas Salunke,
Age : 62 years, Occu : Household,
R/o. Savkar Wadi, Malegaon,
Tq. Malegaon, Dist. Nashik
9. Bhagwan Sakharam Aher,
Age : 67 years, Occu : Service'
R/o. Malegaon, Tq. Nandgaon, Dist. Nashik
10. Laxman Manik Akubattin, (deceased)
- 10-A Smt. Minakshi Laxamn Akubattin
Age : 59 years, Occu : Household.
- 10-B Vinayak Laxman Akubattin
Age : 28 years, Occu : Service
- 10-C Vishal Laxman Akubattin
Age : 26 years, Occu : Service
- R. Nos. 10-A to 10-C
R/o. 21/A, Shramiknagar
Pipline Road, Savedi,
Ahmednagar, District Ahmednagar
11. Manik Irayya Akubattin (deceased)
Through his legal heirs
- 11-A Laxman Manik Akubattin,
Age-57 years, Occu Service
- 11-B Ashok Manik Akubattin
Age:55 years, Occu : Service
- 11-C Chandrabhaga Manik Akubattin,
Age : 85 years Occu : Household
- 11-D Shridhar Manik Akubattin,
Age 47 years, Occu : Business
- 11-E Anant Manik Akubattin,
Age 49 years, Occu : Service,

11-A to 11-D R/o. Shramiknagar,
Pipeline Road, Ahmednagar

R.No.11-E R/o. Sangamner Court,
Tq. Sangamner, District Ahmednagar

12. Hiralal Ramayya Akubattin,
Age - 57 years, Occu : Service
13. Dhananjay Ramayya Akubattin
Age : 47 years, Occu : Service,
Nos.12 and 13 R/o. Shramiknagar,
Savedi, Ahmednagar.

...APPELLANTS

VERSUS

1. Ramesh Gallaya Battin,
Age : 60 years, Occu : Service
2. Sau. Parvati Ramesh Battin,
Age : 56 years, Occu : Household,
Both r/o. Satbhai Mala, Delhi Gate,
Ahmednagar, Dist. Ahmednagar
3. Smt. Tarabai Rangnath Gore, (*Abated as per order dated 07.02.2018*)
Age : 66 years, Occu : Household,
4. Murlidhar Rangnath Gore,
Age : 47 years, Occu : Business
5. Sujata Rangnath Gore, (*Dismissed as per order dated 07.02.2018*)
Age 31 years, Occu Education
Nos.3 to 5 R/o. Near State Bank of India
Savedi Ahmednagar.
6. Shankar Malayya Anmal,
Age 72 years, Occu- Business.
R/o. Behind of Asha Talkies Ahmednagar.
7. Chandrakant Ramavya Bojja,
Age : 60 years, Occu : Service
R/o. Simla Panchwati, Pipeline Road,
Ahmednagar. District Ahmednagar

8. Minakshi Sudarshan Galpelli,
Age : 57 years, Occ. Service,
R/o. Pipeline Road,Ahmednagar,
District Ahmednagar
9. Padma Arjun Gapeli,
Age : 40 years, Occ. Household,
10. Sangita Ramesh Galpell,
Age 52 years, Occ- Service

R. Nos. 9 to 10 R/o. Siddhartha Nagar
Ahmednagar, district Ahmednagar
11. Ramdas Piraji Amrutwar
Age 52 years, Occu : Service,
R/o. Samalwada, Delhi gate,
Ahmednagar, Dist. Ahmednagar.
12. Nirmala Pentavya Adep,
Age : 62 years, Occu : Household
R/o. Asha Talkies, Ahmednagar
13. Ganesh Narayan Bhartal (deceased)
- 13-A Saraswati Ganesh Bhartal, *(Dismissed as per order dtd.28.03.2016)*
Age 75 years, Occu Household,
- 13-B Jyoti @ Munni Ganesh Bhartal, *(Dismissed as per order dtd.28.03.2016)*
Age 43 years, Occu Household,
- 13-C Sanjay Ganesh Bhartal,
Age 34 years, Occ Business
R.Nos. 13-A to 13-C R/o,. Jangubhai Talim
Tophkhana, Ahmednagar
- 13-D Raju Ganesh Bhartal,
Age : 47 years, Occu : Business
R/o. 59 New Pacha Peth,
Solapur. District Solapur
14. Shobha Chandrakant Pedram, *(Dismissed as per order dated 28.03.2016)*
Age : 52 years, Occu. Household

R/o. Datta Mandir,
Tophklia, Ahmednagar

15. Sudhakar Vyankatesh Sambhar,
Age 55 years, Occu Service,
R/o. 409, Satbhai Lane, Ahmednagar
16. Shashikala Balkrushna Naral.
Age – 53 years, Occu – Service
R/o. 24/4, Asha Housing Society,
Behind T.V. Center, Ahmednagar
17. Prakash Chandrayva Anmal
Age-52 years, Occu-Business
Behind Asha Talkies
Ahmednagar.
18. Dattatraya Rajaram Gulapelli,
Age : 52 years, Occu Tailor,
R/o. Shramik Janta Nagar
Savedi Ahmednagar
19. Shankarrao Narsayya Kodam,
Age-53 years, Occu-Service
R/o. Shramik Janta Nagar
Savedi, Ahmednagar.
20. Shobha Shankar Kodam,
Age – 47 years, Occ-Household,

R/o. Shramik Janta Nagar,
Savedi, Ahmednagar
R.Nos.18 to 20 through General
Power of Attorney Holder
Shashikant Shantaram Pawar,
Age-54 years, Occu-Service
R/o. Bagroja Hudco, Ahmednagar
21. Vishnu Gauramya Bhandari
Age- 65 years, Occ. Nil.
R/o. Ambar Apartment,
New State Bank of India,
Savedi, Ahmednagar

...RESPONDENTS

...
Mr. Mr. V. D. Son, Senior Counsel a/w. Mr. A. D. Sonkawade and
Mr. Ashwin V. Hon, Advocate for Appellant
Mr. V. R. Dhorde Advocate for Respondent Nos.1 and 2.

WITH
CIVIL APPLICATION NO. 7583 OF 2014 IN SA/484/2014

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CORAM : ROHIT W. JOSHI, J.

DATE : 19th MARCH, 2025

ORAL JUDGMENT :

1. The present appeal is preferred by original defendant Nos.24 to 32. Plaintiffs are respondent Nos.1 and 2 in the present appeal. The parties will hereinafter be referred as plaintiffs and defendants. The plaintiffs have filed a Civil Suit being Regular Civil Suit No.524 of 2002 against defendant Nos.1 to 32 *inter alia* claiming that defendant Nos.1 to 23 were owners of a land bearing survey No.2/1B/2 situated at Bhistbag locality of Ahmednagar City situated within the local limits of Municipal Council of Ahmednagar totally admeasuring around two acres. The plaintiffs claimed that defendant Nos.2 and 3 had entered into agreement of sale dated 01.07.1989 with them. As per the plaintiff, the agreement between plaintiffs and defendant Nos.2 and 3 was that the entire land would be converted for non-agricultural use over which a lay out will be carved out and the plots which would fall to the share of defendant Nos.2 and 3 would be sold to the plaintiffs. These agreements of sale are at Exhibits-87 and 88. However, subsequently,

defendant Nos.1 to 23 have sold the entire land to defendant Nos.24 to 32 vide registered sale deed dated 10.04.2002.

2. In view of the aforesaid, the plaintiffs preferred the aforesaid suit *inter alia* claiming a declaration that that the sale deed dated 10.04.2002 executed by defendant Nos.1 to 23 was illegal with respect to the share of defendant Nos.2 and 3 and was accordingly not binding on them. In addition, the plaintiffs also sought a decree for partition and separate possession by claiming that the share of defendant Nos.2 and 3 in the suit property be allotted to them. A relief of perpetual injunction restraining defendant Nos.24 to 32 from creating third party interest was also prayed. The learned Trial Court has decided the suit vide judgment and decree dated 28.09.2007. The learned Trial Court has dismissed the suit on the ground that the plaintiffs did not file a suit for specific performance of contract as also that the plaintiffs cannot claim any right over any portion in the suit property on the basis of the agreements i.e. Exhibits-87 and 88.

3. Aggrieved by the dismissal of the said suit, the plaintiffs filed an appeal being Regular Civil Appeal No.256 of 2007. The learned First Appellate Court has partly allowed the appeal holding that the sale deed dated 10.04.2002 was not binding on the plaintiffs to the extent

of share of defendant Nos.2 and 3 which was agreed to be transferred to the plaintiffs vide agreements at Exhibits-87 and 88. On such declaration being granted, the learned First Appellate Court also granted an injunction restraining defendant Nos.24 to 32 from alienating or creating any third party interest over the undivided share of defendant Nos.2 and 3 in the suit property. It will be pertinent to mention here that the learned First Appellate Court has not granted decree for partition and separate possession which was claimed by the plaintiffs in the suit.

4. Aggrieved by the reversing judgment and decree by the learned First Appellate Court, defendant Nos.24 to 32 have filed the present Second Appeal which is admitted vide order dated 26.07.2017 on the following substantial questions of law :-

(i) Whether original defendant nos.2 and 3, who had undivided shares in the suit property ad-measuring 73.34 R, had a right to sell any specific property to the original plaintiffs ?

(ii) Whether the suit for partition, separate possession and declaration as claimed was maintainable in the absence of the relief for specific performance of the agreements of sale executed by original defendant nos.2 and 3 in favour of the plaintiffs ?

(iii) Whether the original plaintiffs were entitled to claim any right, title or interest in respect of the property, which is not specifically described and particularly the area and boundaries thereof, on the basis of the agreements of sale ?

(iv) Whether plaintiffs entitled to the relief of declaration, that the sale deed dated 10.04.2002 executed by defendant nos.1 to 23 in favour of defendant nos.24 to 32 is not binding on them, though no objection was raised to the said sale transaction even

after publication of a notice calling for objections in the newspaper prior to execution of the sale deed ?

(v) Whether the judgment and decree passed by the first appellate Court granting the reliefs of declaration and injunction are perverse ?

5. The agreement between plaintiffs and defendant Nos.2 and 3 is admittedly an unregistered document. It is also not in dispute that the plaintiffs were not placed in possession of the suit property. In that view of the matter, the plaintiffs cannot invoke doctrine of constructive notice against defendant Nos.24 to 32 as provided under Section 3 of the Transfer of Property Act. In view of the fact that constructive notice cannot be attributed to defendant Nos.24 to 32 coupled with the fact that plaintiffs had not sought relief of specific performance of contract, in my considered opinion question of law at Sr.(iv) needs to be answered in favour of the appellants i.e. defendant Nos.24 to 32.

6. Admittedly, even according to the plaintiffs they had merely entered into an agreement of sale which by virtue of Section 54 of the Transfer of Property Act will not create any interest or charge over the suit property. It is also undisputed that they had not sought relief of specific performance of contract. The plaintiffs has prayed for a declaration that sale deed executed by defendant Nos. 2 and 3 in favour of defendant Nos.24 to 32 along with defendant Nos.1 and 4 to 23 was not binding on them to the extent of undivided share of defendant

Nos.2 and 3 and sought perpetual injunction against defendant Nos.24 to 32 from creating third party interest over the suit property. The plaintiffs are thus seeking a negative relief of injunction rather than seeking positive relief of specific performance of contract. Granting such an injunction is prohibited by Section 41(h) of the Specific Relief Act. If the plaintiffs wanted to enforce any right over the suit property it was necessary for the plaintiffs to file a suit for specific performance of contract. Although, the property was undivided and share of defendant Nos.2 and 3 i.e. vendors of the plaintiffs was not earmarked, the plaintiffs could have included a prayer for partition and separate possession in the suit for specific performance of contract in view of Section 22 of the Specific Relief Act. Having regard to the manner in which the suit is framed and filed and particularly having regard to the prayers made in the suit, in my considered opinion the suit was not maintainable. The suit was liable to be dismissed on this ground alone.

7. I am of the considered opinion that question of law at Sr.(ii) and (iii) need to be answered in favour of the appellant and against the respondents in view of the reasons above.

8. As regards substantial question of law (i), it is well settled that a person having undivided share in an immovable property cannot sell any specific portion of the immovable property, even though he may

sell his undivided portion without any demarcation of the portion. However, it appears in the present matter that the defendant Nos.2 and 3 did not enter into agreement with the plaintiffs with respect to any specified portion. They had entered into agreement with respect to plots that were to be allotted to them in the suit property after development of layout. However, since, the suit is held to be not maintainable in view of answer to the other questions, no further discussion is required on this question.

9. In view of the above discussion, the judgment and decree passed by the learned First Appellate Court is legally unsustainable, the plaintiffs are not entitled to the reliefs sought in the plaint and the suit filed by them liable to be dismissed.

10. In that view of the matter, Second Appeal is allowed. Judgment and decree dated 07.02.2014 passed by the learned District Judge-5 Ahmednagar in Regular Civil Appeal No.256 of 2007 is quashed and set aside and judgment and decree dated 28.09.2007 passed by the learned Joint Civil Judge, Senior Division, Ahmednagar in Regular Civil Suit No.524 of 2002 is confirmed. Parties to bear their own cost.

[ROHIT W. JOSHI J.]