



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

**SECOND APPEAL NO.265 OF 2023
WITH CIVIL APPLICATION NO.6250 OF 2023
IN SA/265/2023**

Mehboob s/o Imam Shaikh,
Age 60 years, Occu: Labour/Vegetable Vendor,
R/o Gazipura, Near Krupa Sadan,
English High School, Latur,
Tq. & District Latur. ... Appellant.

Versus

1. Maqbul s/o Yakubsab Shaikh (Chappalband),
Age 58 years, Occu: Labour,
R/o Gazipura, Near Krupa Sadan,
English High School, Latur.
2. Mubarak s/o Imam Shaikh,
Age 52 years, Occu: Labour.
R/o Gazipura, Near Krupa Sadan,
English High School, Latur.
Tq. & District Latur. ... Respondents.

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Advocate for Appellant : Mrs. Anjali Dube.
Advocate for Respondent No.1 : Mr. Sharad V. Natu.
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CORAM : SHAILESH P. BRAHME, J.
DATE : 24.07.2025

JUDGMENT :-

1. Heard both sides.
2. Appellant who is original defendant No.1 has approached this Court against judgment and decree dated 15.11.2017 passed in Regular Civil Suit No.440 of 2008 for

possession, injunction which is further confirmed by judgment and decree dated 22.12.2022 passed in Regular Civil Appeal No.162 of 2017.

3. Learned counsel Mrs. Anjali Dube appearing for the appellant submits that both the Courts below committed error of jurisdiction in holding that respondent No.1/plaintiff is owner and entitled to possession. It is contended that respondent No.1 failed to prove title over the suit property as against that the appellant and his brother are in possession since 1996 which is further perfected by sale deed dated 21.10.2015 at Exh.153. It is contended that a case is made out to allow counter claim for declaration and injunction. It is contended that suit is bad for non-joinder of necessary parties. The written arguments submitted by the appellant in the Court below was overlooked. In the absence of prayer for declaration of ownership, decree passed by both the Courts below is unsustainable. It is contended that appellant is entitled to protection under Section 53-A of Transfer of Property Act.

4. Per contra, Mr. Sharad V. Natu appearing for respondent would support concurrent findings of facts. He would submit that one Ajay Haribhau Pande was the owner of land Gut No.46. The suit property is plot measuring 4250 Square Feet

from Survey No.46 which was agreed to be sold by Ajay Pande on 01.01.1989 to respondent No.1/plaintiff. He was put in possession. Thereafter, on 13.04.2007 a sale deed was executed by Ajay Pande in favour of respondent No.1 which is at Exh.102. Appellant was permitted to use the plot in question and without permission, he encroached and illegally erected tin shed. It is vehemently contended that the appellant failed to produce the sale deeds and his defence was struck off. Therefore, whatever the defence raised is of no avail. The vendor of the appellant was himself not owner of the suit plot and was unable to further alienate it by sale deed at Exh.153.

5. At the outset it needs to be mentioned that defence of the appellant was struck off because he did not comply with order directing him to produce vital documents. The order was not challenged independently or in the appeal. Therefore, there are limitations for the appellant to put forth his plea to counter the claim of respondent No.1/plaintiff.

6. Both the courts below have noticed that agreement of sale was executed by original owner Mr. Ajay Pande on 01.01.1989 in favour of the respondent No.1 and possession was also handed over. In pursuance of the same, sale deed was executed on 13.04.2007 at Exhibit 102 confirming title upon

respondent No.1. Respondent No.1 has led oral evidence to prove the contents of the sale deed, albeit, the witnesses examined in that regard could not satisfy certain aspects of the matter. However, there being registered sale deed, it is safe to conclude that respondent No.1 is the owner of the suit property. The title is corroborated by record of right, payment of tax and electricity bill, which are at Exhibit Nos.51 to 65.

7. Appellant is banking upon sale deed executed on 21.10.2015 by the vendor Rajendra Indrale. Mr. Rajendra Indrale received title vide sale deed dated 23.11.2011 at Exhibit 99, executed by Mr. Ajay Pande. It is clarified in the sale deed that excluding the part of the land alienated to respondent No.1, 69 R. was alienated to Rajendra Indrale. It cannot be said that suit property belonging to respondent No.1 is transferred to the appellant. Pertinently, sale transactions dated 23.11.2011 and 21.10.2015 are subsequent to the filing of the suit. In all probabilities, appellant might have created last document to cover up the case. When Rajendra Indrale proposed to sell land to the appellant, he was not owner and he acquired title on 23.11.2011. There is no clinching material on record to show that the title of the appellant is legal and valid.

8. Both the Courts below have rightly appreciated material on record. The possession of the appellant and his brother cannot be said to be legal because they failed to prove title. Findings recorded by both the Courts below are legal and proper. I find that no substantial question of law is involved in the second appeal. The second appeal is dismissed. There shall be no order as to costs.

9. In view of disposal of second appeal, civil application does not survive. The civil application as such is disposed of.

(SHAILESH P. BRAHME, J.)

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vmk/-