

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6979 OF 2007

1. Ganpati S/o Jaivanta Shingare,
Deceased.
- 1/1. Abhimanyu S/o Ganpati Shingare,
Through his L.Rs.
- 1/1A. Rameshwar @ Balu s/o Abhimanyu Shingare,
Aged 25 yrs., Occu.Agri.,
R/o.Kasba Vibhag, Dharur,
Dist. Beed.
- 1/1B. Laxman S/o Abhimanyu Shingare,
Aged 15 yrs., Minor Under guardianship of his brother,
Rameshwar @ Balu s/o Abhimanyu Shingare,
Aged 25 yrs., Occu.Agri.,
R/o.Kasba Vibhag, Dharur,
Dist. Beed.
- 1/1C. Sow. Vijaymala W/o Santosh Jadhav,
Aged 21 yrs., Occu.household,
R/o.Walipur-Jawla, Tq. & Dist.Beed.
- 1/1D. Moharbai D/o Abhimanyu Shingare,
Aged 15 yrs., Minor, Under guardianship of her
Brother Rameshwar @ Balu s/o Abhimanyu Shingare,
Aged 25 yrs., Occu.Agri.,
R/o.Kasba Vibhag, Dharur,
Dist. Beed.
- 1/2. Bhagwat S/o Ganpati Shingare,
Aged 2 yrs., Occu.Agri..
R/o.Kasba Vibhag, Dharur,
Dist. Beed.
- 1/3. Kalawati W/o Ganpati Shingare,
Aged 75 yrs., Occu.Agri.,
R/o.Kasba Vibhag, Dharur,
Dist. Beed.
- 1/4. Mangal W/o Vasant Sapate,
Aged 42 yrs., Occu. Household,
R/o.Kasba Vibhag, Dharur,
Dist. Beed.

1/5. Sumanbai W/o Raosaheb Ghadge,
Aged 34 yrs., Occu. Morewadi,
R/o.Kasba Vibhag, Dharur,
Dist. Beed. ..Petitioners

Versus

Vilas S/o Vasudevrao Dube,
Aged 62 yrs, Occu. Agri.,
R/o. Peth, Dharur, Tq. Dharur,
Dist. Beed. ..Respondent

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Advocate for Petitioners : Mrs. Rekha Choudhari
Advocate for Respondent : Mr. A.S. Nimbalkar

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JUNE 23, 2025

ORAL JUDGMENT :-

1. Heard learned advocates for respective parties.
2. This writ petition takes exception to order dated 14.09.2007 passed by District Judge-2, Majalgaon in Misc. Civil Appeal No.17 of 2004 by which the order dated 29.09.2003 passed by the learned Civil Judge, Junior Division, Dharur thereby returning the plaint in Regular Civil Suit No.59 of 2003 is quashed and set aside.
3. The respondent filed Regular Civil Suit No.59 of 2003 seeking relief of specific performance of contract based on agreement to sale in respect of suit property. The petitioner/defendant filed an application to frame issues as to jurisdiction of Civil Court contending that the suit property is a evacuee property and jurisdiction to deal with dispute as to such property vests with competent authority or Custodian General under Act of 1951.

4. The Trial Court allowed the application vide order dated 29.09.2003 and returned plaint back to the plaintiff for proper presentation before the Custodian under Administration of Evacuee Property Act, 1950. The plaintiff/respondent assailed aforesaid order by filing Misc. Civil Appeal No.17 of 2004 before learned District Judge at Majalgaon, who pleased to allow the appeal vide impugned judgment and order dated 14.09.2007, eventually set aside order passed by Trial Court and restored suit to its original position before Civil Court.

5. Ms. Choudhari, learned advocate appearing for petitioners submits that miscellaneous civil appeal against the order of return of plaint was not maintainable. Secondly, suit property is evacuee property hence, Trial Court had rightly returned the plaint for presentation before competent authority under Evacuee Act of 1950.

6. Mr. Nimbalkar, however, supports the impugned order of learned District Judge contending that suit property has lost status of evacuee property after sale certificate being issued to defendant who had acquired absolute ownership and accordingly, executed agreement to sale in favour of plaintiff.

7. Considering the submissions advanced, it can be observed that the suit property was dealt with under Act of 1950. Later on, statutory authority issued a sale certificate in favour of defendants. Accordingly, the defendants acquired the ownership. Apparently, the

sale certificate passed absolute ownership in favour of defendants, therefore, administration of custodian as contemplated in Act of 1950 would not have any jurisdiction or control over the property. The sale certificate issued in favour of defendants would be sufficient evidence to accept that suit property was open and defendants are authorized to deal with it without fetter under the Act of 1950.

8. Mr. Nimbalkar relying upon the observations of Allahabad High Court in the case of **Manohar Lal Vs. Rent Control and Eviction**¹ rightly contends that once the public auction in respect of evacuee property is conducted and sale certificate is issued, the title absolutely vests in favour of purchaser. In this background, the learned District Judge was justified in holding that the Civil Court has jurisdiction to decide the issue as to specific performance of contract raised in the plaint and there is no bar of jurisdiction under the provisions of Evacuee Property Act.

9. The another contention raised on behalf of petitioners is that miscellaneous civil appeal filed before the learned District Judge was not maintainable under law. However, provisions of Order 43 Rule 1 (Clause (a)) would show that the order passed under Rule 10 of Order VII thereby returning plaint to be presented to proper Court can be subjected to appeal against the order. In that view of matter, there is no substance in writ petition. Writ Petition stands rejected.

1 AIR 1959 ALL 388

10. Since the suit is pending from 2003, it is necessary to direct the learned Trial Judge to decide the same as expeditiously as possible. In that view of matter, the Trial Court shall endeavour to decide the suit within a period of one year from the date of this order. Parties to co-operate with the Trial Court.

(S.G. CHAPALGAONKAR, J.)