



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

SECOND APPEAL NO. 492 OF 2013

Shamshadbee Shaikh Mukhtyar,
Age 42 yrs. occ. Household,
R/o House No.106, C.I.V. Housing Society,
Shivaji Nagar, Darga Dayara,
Ahmednagar.

... **Appellant**
(ori. defendant)

VERSUS

Shaikyh Musa Shaikh Ishaque,
Died through Legal heirs,

1-A) Shaikh Sadik Shaikh Musa,
Age: 59 years, Occu: Service,

1-B) Shaikh Shakil Shaikh Musa,
Age: 45 years, Occu: Business,

1-C) Shaikh Jamil Shaikh Musa,
Age: 40 years, Occu: Business,

All R/o : Jangiwada, House No.500B,
In front of Kwaja Garib Nawaj Beker,
Bhingar, Ahmednagar,
Tq & Dist: Ahmadnagar.

... **Respondents**
(ori. plaintiff)

...
Advocate for Appellant : Mr. Rajesh H. Mewara.
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CORAM : SHAILESH P. BRAHME, J.
DATE : 15.10.2025

ORAL JUDGMENT :-

1. Heard learned counsel for the appellant.
2. None for the respondents.

3. Second appeal is admitted on following substantial questions of law formulated by this Court vide order dated 31.07.2013.

“Whether the courts below committed an error in holding that the suit property was self-acquired property of the plaintiff/respondent in the absence of satisfactory evidence of the plaintiff about the acquisition and in the face of admission that the husband of the appellant used to pay his earned salary to his father/respondent before his marriage and whether, therefore, the said finding is perverse?”

4. Appellant is original defendant who is facing decree of possession passed by Trial Court in Regular Civil Suit No.122 of 2006 which is further confirmed by Lower Appellate Court in Regular Civil Appeal No.253 of 2009.

5. The subject matter is the house situated at House No.106, C.I.V. Housing Society, Darga Dayara, Ahmednagar measuring 3024 square feet. The respondent is father-in-law of the appellant. Appellant's husband Shaikh Mukhtyar was working as a Conductor in MSRTC. He died in accident on 05.11.1998. He is survived by appellant and two daughters.

6. According to respondent/plaintiff, the suit house is owned by him. Appellant and her husband were not concerned

with it. Appellant was in possession of the suit house after demise of her husband and she refused to hand over the possession. There were issues between the appellant and her in-laws. Hence, he was required to file suit for injunction and possession.

7. Appellant contested the suit by filing written statement denying all the allegations. It is contended that she is in lawful possession of the suit house. It was purchased in the name of respondent due to love and affection. But the consideration was paid from the source of income of deceased husband. It is further contended that she had no place of residence after demise of her husband. She is paying the taxes. It is further contended that as against that respondents are affluent and they have other immovable properties for their residence. Additionally, counter claim for declaration and injunction was also made.

8. Parties adduced oral evidence and documentary evidence. Trial Court decreed the suit partly vide judgment dated 24.08.2009. The suit for declaration was decreed but it was dismissed to the extent of injunction. Being aggrieved, Regular Civil Appeal No.253 of 2009 was preferred by the appellant which came to be dismissed on 17.04.2013.

9. Learned counsel for the appellant submits that no title document is produced by the respondent on record. It is submitted that appellant's husband was in service and the suit house was purchased from his earning source. It is submitted that the documentary evidence produced by the respondent would not confer the title. It is further contended that respondent died on 10.02.2023. After his demise, the appellant would be entitled to 1/4th share which is allottable to the deceased husband.

10. None appeared for the respondents.

11. I have gone through the original record. Perused the judgment passed by Courts below. Respondent examined three witnesses and the appellant examined two witnesses. It is not much disputed that appellant's husband who was in service as a Conductor in MSRTC and died in an accident on 05.11.1998. He is survived by appellant and his two daughters. Both Courts below found favour with the respondent because appellant was unable to produce the sale deed. It is further recorded that no evidence was adduced by her to make out a case that from the income of her husband, the suit plot was purchased.

12. None of the parties have placed on record the sale deed of the plot. They have rival claim of title over the suit house. Respondents placed on record various receipts of the co-operative society paying the contribution which are in the name of respondent. Number of tax receipts are produced on record which are also in the name of the respondent. Those are not sufficient to infer title. The extract of the share register at Exh.40 and the documents of the co-operative society showing that respondent was the member of the society is not sufficient to constitute and confer title. The burden was upon the respondent to produce on record reliable evidence to show his title. I find that respondent failed to discharge the burden which is not properly appreciated by Courts below.

13. It appears from record that the appellant is widow who is staying with her daughters in suit house. It has come on record that she has no alternate place of residence. As against that, respondents are having immovable properties. Both the Courts below overlooked this aspect of the matter. It further reveals from record that the sale deed was executed in favour of her husband but it was either lost or destroyed when appellant was away from the house. The record reveals that there were disputes between the appellant and respondents/in-

laws and criminal action was taken at the instance of the appellant. This part of the matter has not been properly appreciated by Courts below.

14. The respondent had filed suit for injunction and possession only, without claiming relief of declaration. His title was questioned by the appellant and therefore he should have sought declaration of his ownership. Merely suit for possession on title is not sufficient. I am fortified in my view by the law laid down by Supreme Court in the matter of ***Rajiv Gupta and others Vs. Prashant Garg and others (2025 INSC 552)***.

15. Appellant's counter claim was rejected by the Trial Court albeit she is found to be in possession of suit house. She is entitled to the injunction though not the declaration.

16. Considering the preponderance of probabilities, I find that the claim of the appellant that the suit plot was purchased from the income of her husband cannot be ruled out. In absence of any material against her she cannot be said to be trespasser. After the demise of the respondent, appellant can be said to have some share in the suit house, provided that, respondent deceased has not executed any Hiba or testamentary disposition. Considering overall circumstances, I

find that the substantial question of law formulated in the appeal will have to be answered in favour of appellant. In that view of the matter, appeal succeeds. I pass following order :

- (i) Second appeal is allowed.
- (ii) Impugned judgment and decree passed in Regular Civil Suit No.122 of 2006 dated 24.08.2009 as well as Regular Civil Appeal No.253 of 2009 dated 17.04.2013 are quashed and set aside.
- (iii) Regular Civil Suit No.122 of 2006 shall stand dismissed and counter claim stands allowed, restraining the respondent, his heirs or anybody claiming through from causing obstruction to possession of appellant over suit house.

(SHAILESH P. BRAHME, J.)

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vmk/-