



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 585 OF 2023

Martin Danial Bhalerao
Age : 52 years, Occ. Business,
R/o : Ghorpade Peth, Pune.

...APPELLANT
(Original Plaintiff)

VERSUS

1. Tarachand Sakharam Salve,
Age : 65 years, Occ. Agril,
2. Latabai Tarachand Salve,
Age : 60 years, Occ. Agril,
3. Anna Tarachand Salve,
Age : 33 years, Occ. Agril,
4. Ganesh Tarachand Salve,
Age : 29 years, Occ. Agril,

Respondent Nos. 1 to 4 are
R/o : Nagar, Tq. & Dist. Ahmednagar.

5. Dinessh Sitaram Kulwal,
Age : 45 years, Occ. Agril,
R/o : Behind Mahesh Talkies,
Karachiwala Nagar, Ahmednagar,
Tq. & Dist. Ahmednagar.
6. Radheshyam Madhavlala Khandewal,
Age : 70 years, Occ. Agril & Business,
7. Prakash Balasaheb Darkunde,
Age : 31 years, Occ. Agril. & Business,
R/o : Bahirwadi, Post. Jeur,
Tq. Nagar, Dist. Ahmednagar.
8. Bhagwan Vithoba Aware,
Age : 42 years, Occ. Agril,
R/o; Imampur, Tq. Nagar,
Dist. Ahmednagar.
9. Kumudini Danial Bhalerao,
Age; 70 years, Occ. Agril,

R/o : "Saint Luka" Housing
Society, Panchhaud, Guruwar
Peth, Pune.

...RESPONDENTS
(Original Defendants)

.....
Mrs. Charuta S. Deshmukh : Advocate for the Appellant
.....

CORAM : S. G. CHAPALGAONKAR, J.

Dated : 13.02.2025

JUDGMENT :-

1. Appellant (Original Plaintiff) impugns judgment and decree dated 01.04.2023 passed by Principal District Judge, Ahmednagar in Regular Civil Appeal No. 341 of 2016, thereby, upholding judgment and decree dated 29.09.2016 passed by 3rd Joint Civil Judge, Junior Division, Ahmednagar in Regular Civil Suit No. 506 of 2011. (The parties are hereinafter referred as per their original status in suit for the purpose of brevity).

2. The plaintiff filed Regular Civil Suit bearing No. 506 of 2011 seeking relief of declaration and ownership in respect of 1/3rd share in suit property bearing Survey No. 107/4 and consequential relief of perpetual injunction against defendant Nos. 1 to 8 from alienating or creating third party interest in suit property on the basis of sale deed dated 01.03.2011.

3. In brief, plaintiff contends that his grand-father Raghunath had purchased suit land under registered sale deed on dated 12.05.1924. Plaintiff being his legal representative, is in lawful possession of suit

property. Defendant No. 1 taking dis-advantage of fact that plaintiff's father was residing at Pune in pursuance to his job, got entered his name in record of rights in collusion with Talathi. On 01.03.2011 defendant No. 1 illegally sold part of suit land to defendant Nos. 5 to 8.

4. Contesting defendants refuted plaintiff's claim contending that suit property is part of Survey No. 107. Previously it was bearing Survey No. 66. Survey No. 107 has been renumbered as block No. 191 during consolidation. Defendant Nos. 1 to 4 inherited suit land from Sakharam who was re-granted land as per Watan Abolition Lands Act. Plaintiff has no concerned with suit property. Trial Court framed issues based on pleadings, recorded evidence and concluded that plaintiff failed to prove their ownership and possession over four boundaries as described in plaint being part of Survey No. 107, consequently suit is dismissed. Plaintiff carried forward claim in appeal before learned District Judge, Ahmednagar, vide Regular Civil Appeal bearing No. 341 of 2016, which came to be dismissed upholding judgment and decree of trial Court.

5. Mrs. Charuta Deshmukh, learned Advocate appearing for appellant/plaintiff submits that in year 1924 grand-father of appellant had purchased entire suit land from Survey No.107 under registered sale deed. The claim in present suit is pertaining to 4 A 99 R from Survey No. 107. She would endeavour to point out that Courts below confused themselves in between Survey No. 107 and Gut No. 107. Respondents admitted that they purchased suit land of Survey No. 107 from respondent Nos. 5 to 8, which shows that plaintiff's land illegally dealt and possessed by defendants.

6. It appears that, plaintiff based his case on his oral evidence and testimony of PW-2 Pravin Gaikwad, whereas, documentary evidence

in form of Exhibit 83 and 87 produced by defendants show that old Survey No. 65 and 66 consolidated as Block No. 107, whereas, old Survey No. 107 is converted to Block No. 191. 7/12 extract of Survey No. 199 and 107/4 are also made part of record. Plaintiff could not produce on record any evidence to show that land purchased by his grand-father has been merged in block No. 107. On the other hand, defendant No. 6 in his evidence stated that block No.107 is formed by consolidating old Survey No. 65 and 66 and suit property bearing block No. 107/4 does not form part of old Survey No. 107. The extract of consolidation register at Exh. 88 supports case of defendants that Survey No. 107 has been merged in block No. 191. Mutation entries on record supports case of defendants.

7. In light of aforesaid evidence, both Courts have recorded finding of fact that land in possession of defendants is not part of old Survey No. 107 and plaintiff has erroneously made up claim without verification of old Survey record of block No.107. Looking to consolidation and revenue record old Survey No. 107 is now converted into Gut No. 191, however, plaintiff has described boundaries of Gut No. 107 in suit for raising his claim. Both Courts below are therefore justified in dismissing suit and appeal. No substantial question of law arises for consideration in the Second Appeal. In result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, pending Civil Applications, if any, shall stand dismissed.

(S. G. CHAPALGAONKAR)
JUDGE