



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.68 OF 2013**

1. Abdul Sayeed Khan s/o Abdul Haque Khan,
Age: 56 years, Occ. Bsuiness,
R/o: Friends Colony,
Konkanwadi, Aurangabad.
2. Abdul Noor Khan s/o Abdul Haque Khan,
Age: 51 years, Occ. Bsuiness,
R/o: Friends Colony,
Konkanwadi, Aurangabad.
3. Abdul Najib Khan s/o Abdul Haque Khan,
Age: 46 years, Occ. Bsuiness,
R/o: Friends Colony,
Konkanwadi, Aurangabad.

..Appellants
(Orig. Plaintiffs)

Versus

1. Municipal Corporation,
Aurangabad, through its
Commissioner.
2. The State of Maharashtra,
Through the Collector,
Aurangabad.

..Respondents
(Orig. Defendants)

...

Mr. A. D. Kasliwal, Advocate for Appellants.

Mr. V. G. Deshmukh h/f Mr. S. S. tope, Advocate for Respondent No.1.

Mr. V. S. Badakh, AGP for Respondent No.2.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 21st APRIL, 2025.**

ORDER:-

1. The appellants/original plaintiffs impugn judgment and decree dated 20.06.2012 passed by District Judge, Aurangabad in Regular Civil Appeal No.19/2010, thereby upholding judgment and decree dated 31.10.2009 passed by Civil Judge, Senior Division,

Aurangabad in Special Civil Suit No.189/2005, by which claim of appellants/plaintiffs for grant of decree of possession in respect of suit property has been rejected. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The facts giving rise to present Second Appeal can be summarized as under:

The suit property is a plot bearing no.27, present City Survey No.16566 admeasuring 1727.27 square yards situated in Usmanpura, Aurangabad. According to plaintiffs, suit plot was allotted by respondent no.1 to their father namely Abdul Haque Khan under Kabala dated 16 Meher 1357 Fasli i.e. in the year 1941 against consideration of Rs.855/-. Abdul Haque Khan was put into possession of suit property. After demise of Abdul Haque Khan, plaintiffs searched documents left behind by him and came across a copy of Kabala in respect of suit property. They obtained certified copy of Kabala from Registration Office. According to plaintiffs, during lifetime of Abdul Haque Khan, he could not pay attention to suit property, as he was occupied in his business. The plaintiffs were not aware about aforesaid Kabala till they traced out documents. The suit property is still standing in the name of respondent no.1-Municipal Corporation, Aurangabad and now some other persons are in possession and seeking to regularize their possession. According to plaintiffs, they being legal

representatives of original Kabala holder, are entitled to succeed property and seek possession.

3. The contents of plaint were refuted by respondent no.1 denying document of title/Kabala so also disputed description of suit property. According to them, suit property is standing in the name of respondent no.1 in record of City Survey, which was never questioned by plaintiffs' father and plaintiffs. Their claim is based on false and fabricated documents.

4. The Trial Court framed issues, recorded evidence of parties and dismissed suit. The Appellate Court concurred with findings recorded by Trial Court. Hence, this Second Appeal.

5. Mr. Kasliwal, learned Advocate appearing for appellants vehemently submits that present Second Appeal involves substantial questions of law as to interpretation of documents at Exhibit-57, titled as Kabala. It is a registered document. The contents thereof clearly shows that father of plaintiffs was allotted suit property with right to further transfer, which constitutes absolute right of ownership. According to him, condition as to raise construction within period of one year was subject to further eventuality of obtaining permission for construction from Municipal Council/Local Fund. Since plaintiffs' father never applied for construction permission, further requirement of raising

construction within period of one year cannot be insisted upon. The property was put into possession of plaintiffs' father on payment of consideration. Therefore, plaintiffs' ownership in respect of suit plot ought to have been accepted. Eventually, decree for possession and injunction ought to have been passed.

6. Plain reading of document at Exhibit-57 would show that Municipal Council/Local Fund allotted suit plot subject to condition of raising construction as per permission granted by Competent Authority within period of one year, failure to do so, had consequence of forfeiture of all rights of allottee or his legal representatives. Similarly, amount deposited in pursuance to grant of Kabala was to be forfeited.

7. The plaintiffs' case is that allotment of plot was for raising construction, which was to be raised within period of one year. Mr. Kasliwal submits that construction was to be raised within period of one year after obtaining permission from Local Fund. However, it is difficult to countenance with his submissions. The plain and clear reading of Kabala would show that then Local Fund had allotted property for raising construction as per permission, which was to be completed within period of one year. As such, raising construction as per permission was a condition precedent for retaining right over property. From plain reading of document, it cannot be gathered that construction was to be raised within one

year from the date of obtaining construction permission. It only stipulates that construction must be preceded by construction permission of Local Fund.

8. The rule for interpretation of document is that intention of parties to the covenant has to be gathered and contents of documents must be read in such a manner that intention of parties is given full effect. Apparently, Local Fund allotted property for raising construction over open plot by way of Kabala with rider that such construction must be raised within period of one year, else allotment/Kabala itself would stand cancel and no right on the basis of such Kabala would be claimed thereafter. Both Courts have elaborately considered and interpreted document containing unequivocal and unambiguous term regarding raising of construction within period of one year. There is nothing to gather that after obtaining construction permission, starting point of one year to be counted. Marathi translated version of aforesaid Kabala is placed at Exhibit-47, PW-2 who is an Advocate, conversant with translation of document, has accepted that Marathi version would prevail over English translation of Kabala, which connotes that independent time for obtaining construction permission was not stipulated to comply condition of raising construction within period of one year.

9. Pertinently, if interpretation as sought to be advanced by plaintiffs is accepted, there would be anomalous situation. The plaintiffs, who are required to obtain construction permission would take no steps to secure permission for years together and retain property without raising construction under pretext that such construction permission is not yet received. Therefore, interpretation sought to be advanced on behalf of plaintiffs would read to absurdity, contrary to intention of parties as could be gathered from contents of document. In that view of matter, this Court finds that interpretation of document as adopted by Trial Court as well as Appellate Court is in tune with intention of parties and there cannot be dissent.

10. One more aspect of matter is relevant. The document of Kabala is of the year 1941. It was never acted upon by father of plaintiffs during his lifetime. The plaintiffs have first time raised claim in year 2009 contending that they could find document of Kabala after death of their father. The property has been consistently mutated in the name of the Local Fund, Municipal Council and Municipal Corporation. The original Kabala is not produced on record. The plaintiffs are coming with case that they could obtain certified copy from office of Registration, however, Trial Court observed that such copy is obtained from Collector Office. The plaintiffs are having no personal knowledge as regards

to grant of Kabala. They have not seen original document. The document at Exhibit-57 appears to be issued by District Collector Office. It is in Urdu language. The plaintiffs relied upon English translation of the same. Therefore, existence of Kabala itself is doubtful. There is nothing on record to show that plaintiffs' father was put into possession of property. Since 1971 City Survey scheme is applied to Aurangabad and record of City Survey consistently mentions name of Aurangabad Municipal Council as owner. The Trial Court has, therefore, recorded findings that plaintiffs failed to prove that suit plot was allotted to their father. The Appellate Court also endorsed aforesaid findings. Therefore, basically plaintiffs failed to prove existence of Kabala and allotment of suit property. Even assuming existence of such document, plaintiffs could not establish any right to raise claim for possession and perpetual injunction.

11. In result, no substantial question of law is made out for consideration in this Second Appeal. Second Appeal sans merit. Hence, Second Appeal stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE