



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

**CIVIL APPLICATION NO.9798 OF 2023
(FOR LEAVE TO FILE APPEAL)
IN
SECOND APPEAL (STAMP) NO.24241OF 2023
WITH
CIVIL APPLICATION NO.9796 OF 2023
WITH
CIVIL APPLICATION NO.9797 OF 2023**

1. Latabai Vinayak Bhosle,
Age: 59 years, Occupation: Agriculture,
2. Rahul Vinayak Bhosle,
Age: Major, Occupation: Agriculture

Both Resident of: Mangu Jalgaon,
Tq. Ghansawangi, District Jalna.

..Applicants
(Resp. No.1 in RD)

Versus

1. Ahmedkhan Akbarkhan Pathan,
Age: 74 years, Occupation: Agriculture,
Resident of: Naigaon,
Taluka and District Aurangabad ..Org. Plaintiff
2. Kantabai Punjaram Khandagale,
Age: 60 years, Occupation: Agriculture
3. Markas Punjaram Khandagale,
Age: 42 years, Occupation: Agriculture
4. Luckas Punjaram Khandagale,
Age: 38 years, Occupation: Agriculture
5. Charles Punjaram Khandagale,
Age: 35 years, Occupation: Agriculture
6. Pushpa Punjaram Khandagale,
Age: 32 years, Occupation: Agriculture

Resp. Nos.2 to 6 Resident of: Mukundwadi,
Taluka and District Aurangabad. ..Org. Defendants

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Ms. Rakhi Sundale h/f Mr. V. G. Mitkari, Advocate for Applicants.
Mr. Shriram V. Deshmukh h/f Mr. D. R. Deshmukh a/w Mr. A. R. Joshi, Advocate for Respondent No.1.
Respondent Nos.2 to 6 are served.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON :- 01st APRIL, 2025.

PRONOUNCED ON :- 17th APRIL, 2025.

ORDER:-

1. The applicants seek leave to file Second Appeal assailing judgment and decree dated 15.02.2020 passed by learned District Judge, Jalna in Regular Civil Appeal No.162/2015, thereby setting aside judgment and decree dated 05.10.2015 passed by Civil Judge, Senior Division, Ghansawangi in Regular Civil Suit No.168/2012. Eventually, Appellate Court decreed the suit of specific performance of contract and granted consequential decree of perpetual injunction against defendants.

2. The learned Advocate appearing for the applicants submits that disputed property is from Gut No.256 admeasuring 1H 82R situated at village Mangu-Jalgaon, Tq. Ghansawangi, Dist. Jalna. One Punjaram Khandagale purchased said property under registered sale deed dated 27.12.1993 and it was given for cultivation to Vinayak Sajerao Bhosle i.e. husband of applicant no.1 and father of applicant no.2. The possession continued with Vinayak, present applicants and respondent no.7 and they are cultivating the same. Punjaram expired on 27.08.1997. The name

of respondent nos.2 to 6 i.e. legal representatives of Punjaram were mutated in record of rights vide Mutation Entry No.1603.

3. The respondent no.2 executed agreement to sale dated 09.08.2010 in favour of Vinayak and received earnest amount of Rs.30,000/-. The sale deed was to be executed on 12.08.2011. However, respondent no.2 failed to execute sale deed. Hence, Vinayak had filed Regular Civil Suit No.124/2011 seeking specific performance of contract against respondent nos.2 to 6. It has been dismissed vide judgment and order dated 05.10.2015. During pendency of that Suit, respondent nos.2 to 6 executed agreement to sale in favour of present respondent no.1-Ahmedkhan. Later on, respondent no.1 filed Regular Civil Suit No.168/2012 seeking specific performance of contract against respondent nos.2 to 6. The said suit was dismissed vide judgment and order dated 05.10.2015. However, in Regular Civil Appeal No.162/2015 filed before District Judge, Jalna suit of respondent no.1 has been decreed directing respondent nos.2 to 6 to execute sale deed in his favour. According to applicants, they were not made party to the suit filed by respondent no.1 and now decree is sought to be executed and their possession is sought to be disturbed. Therefore, applicants are aggrieved party and entitled to challenge the decree.

4. The learned Advocate appearing for the applicants relying upon judgment of Supreme Court of India in case of ***My Palace***

***Mutually Aided Co-operative Society Vs. B. Mahesh and Ors.*¹**

submits that applicants are likely to be affected by impugned judgment and decree passed in favour of respondent no.1. They were necessary party in suit, however, decree has been passed without adding them as party ignoring their rights. Therefore, they are entitled to file Appeal.

5. Per contra, learned Advocate appearing for respondent no.1 submits that Vinayak i.e. husband of applicant no.1 and father of applicant no.2 had set up his independent claim on the basis of agreement to sale dated 09.08.2010. Vinayak had instituted Regular Civil Suit No. 124/2011 seeking specific performance of contract and same has been dismissed on 05.10.2015 holding that Vinayak had no right over suit property. He would submit that present proceeding is arising out of agreement to sale executed by respondent nos.2 to 6 in favour of respondent no.1. The decree for specific performance of contract has been passed. The applicants cannot be aggrieved by such decree, since they were not party to the contract.

6. Having considered submissions advanced and on perusal of record, it is evident that applicants are trying to put up their claim that they are in possession of suit property and prior to them husband of applicant no.1 i.e. Vinayak was in possession on the

¹ 2022 LiveLaw (SC) 698.

basis of agreement to sale. Apparently, Vinayak lost his battle raised on the basis of alleged agreement to sale execute in his favour. In the year 2015 his suit i.e. Regular Civil Suit No.124/2011 has been dismissed vide judgment and order dated 05.10.2015. He died in the year 2023. Till then, he did not challenge aforesaid decree and same has attained finality.

7. The present proceeding is arising out of Regular Civil Suit No.168/2012 that was instituted by respondent no.1 seeking decree for specific performance of contract based on agreement to sale dated 09.09.2011 executed by respondent nos.2 to 6 in his favour. The First Appellate Court accepted case of respondent no.1 and decreed suit for specific performance of contract and granted consequential decree of perpetual injunction against respondent nos.2 to 6. Undisputedly, applicants were neither parties to agreement to sale nor any decree is passed against them. They cannot be aggrieved by decree of specific performance and consequential relief granted in favour of respondent no.1, Since Vinayak i.e. husband of applicant no.1 and father of applicant no.2 has already suffered adverse adjudication of his claim in respect of same property and that decree has attained finality, the applicants cannot be permitted to challenge decree passed in favour of respondent no.1.

8. In case, they wish to raise any independent claim as to the possession of property, they could have availed any other alternate remedy as permissible under law. However, in absence of any right as against respondents, they cannot claim themselves to be aggrieved by decree. In result, application for Leave to File Appeal sans merit and liable to be dismissed. Consequently, Civil Application stands dismissed.

9. In view of dismissal of Civil Application for Leave to File Appeal, pending Civil Applications stand disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025