IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.469 OF 2023
WITH
CIVIL APPLICATION NO.9239 OF 2021
WITH
CIVIL APPLICATION NO.796 OF 2021

1. Mina w/o Shrikant Ranmalkar,
Age 69 Years, Occu Agriculture,

2. Sushil s/o Shrikant Ranmalkar,
Age 42 Years, Occu: Agri. & Business,

3. Sunit s/o Shrikant Ranmalkar,
Age 39 Years, Occu: Agri. & Business,

All R/o Farm No.60, Pan No.VIPR1048B,
General Arunkumar Vaidya Colony,
Bhingar, To. Dist. Ahmednagar ... Appellants

Versus

1. Raghuvir s/o Ramchandra Rahinj,
Died through Lrs.

1-A. Ranjana Ankush Shinde
Age: 42 yrs, occu. household.
P/o Devakarwasti, At Post Choundi,
Tal. Jamkhed Dist. Ahmednagar.

2. Sham s/o Baburao Rahinj,
Age 69 Years, Occu: Agri. & Service,

3. Indubai Bhalirao Dangane,
(Deceased) Deleted

4. Balkrushna s/o Ganpatrad Rahinj,
Age 65 Years, Occu: Agri. & Service,

5. Ramesh s/o Ganpatrao Rahinj,
Age 62 Years, Occu: Agri. & Service,

6. Vitthal s/o Ganpatrao Rahinj,
Age 56 Years, Occu: Agri. & Service,

7. Anil s/o Ganpatrao Rahinj,
Age 56 Years, Occu: Agri. & Service,

Nos.2, 4 to 7 All R/o Gawali Wada,
Bhingar, Tq. Dist. Ahmednagar

8. Dattu s/o Baburao @ Ananda Rahinj
Died Thruogh Lr's

8-A. Padmabai Dattu Rahinj
Age:60yrs, Occ: Household
R/o. Deulkar Wasti, At Pachondi
Tq. Jamkhed, Dist. Ahmednagar.

8-B. Sachin Dattu Rahinj
Age: 62 Yrs, Occ: Household,

8-C. Sadhana Dattu Rahinj
Age: 59 Yrs, Occ: Household

8-D. Archana Dattu Rahinj
Age: 64, Occ:. Household

All R/o Darewadi Tq & Dist - Ahemagnagar

9. Pandurang s/o Babanrao Rahinj,
Age 67 Years, Occu: Agri.,

10. Gautam s/o Vishnu Rahinj,
(Dead) Through Legal Heirs

10-A. Manisha w/o Gautam Rahinj,
Age 37 Years, Occu: Household,

10-B. Om s/o Gautam Rahinj,
Age 10 Years, Cccu: Education,

10-C. Divya d/o Gautam Rahinj,
Age 14 Years, Occu: Education,

10-D. Bharti d/o Gautam Rahinj,
Age 16 Years, Occu: Education,
No.10-B To 10-D Are Minors,
Through Guardian Mother 10-A

11. Sugreev s/o Vishnu Rahinj,
Age 34 Years, Occu: Agri.,

R/O 3-A, Karmyogi,
Opp. Santoshi Mata Mandir,
Talegaon Dabhade, Tq. Mawal,
Dist. Pune.

12. Durva s/o Vishnu Rahinj,
Age 33 Years, Occu: Agri.,

13. Satyabhama w/o Vishnu Rahinj,
Age 71 Years, Occu: Household,

14. Chandrabhaga w/o Babanrao Rahinj,
Age 92 Years, Occu: Household

Nos.8 to 10-D, 12 to 14 All R/o Near Jamkhed Naka,
Nagar-Jamkhed Road, Darewadi,
Tq. Dist. Ahmednagar

15. Madan s/o Baburao Rahinj,
Age 72 Years, Occu: Agri.,

16. Mahesh s/o Mohan Rahinj,
Age 44 Years, Occu: Agri. & Service,

17. Santosh s/o Mohan Rahinj,
Age 42 Years, Occu: Agri. & Service,

18. Ratanbai w/o Mohan Rahinj,
Age 72 Years, Occu: Agri. & Household,

19. Kalpana Mohan Rahinj,
Age 37 Years, Occu: Household,

20. Anusayabai Baburao Rahinj,
(Dead) Deleted
No.15 To 19 All R/o Saidapur Marathi Galli,
Dharwad, Tq. Dist. Dharwad
(Karnataka State)

21. Ajay s/o Suresh Awasrkar
Age: 32 Years, Occ: Agril & Business,
R/O. Awasrakar Mala, Sarasnagar,
Ahmednagar, Dist. Ahmednagar.

22. Vijay s/o Dattatraya Karande
Age: 39 Years, Occu: Agril. & Business,
R/o. Karande Mala,
Darewadi, Ahmednagar

(Respondent Nos.21 and 22 are
proposed additional respondents) ..Respondents
(Orig. Defendants)

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Mr. G. K. Naik thigle, Advocate for the Appellants.
Mr. S. N. Gaikwad and Mr. N. V. Gaware, Advocate for Respondent Nos.3-A to 8-D, 9, 1-A to 10-D, 11 and 12.
Mr. S. R. Deshpande, Advocate for Respondent Nos.1-A, 2, 4 to 7 and 15 to 19.
Mr. Y. V. Kakade, Advocate for Respondent Nos.21 and 22 (in CA/9239/2021).

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CORAM : S. G. CHAPALGAONKAR, J.
DATE : 13th MARCH, 2025.

ORDER:-

1. The appellants impugn judgment and decree dated 26.02.2019 passed by learned District Judge-4, Ahmednagar in Regular Civil Appeal No.250/2013. The appellants were not party to the original suit i.e. Regular Civil Suit No.99/2002. The respondent nos.1 to 7 (original plaintiffs) had instituted Regular Civil Suit No.99/2002 seeking decree of partition and separate possession in respect of suit properties, which includes agricultural land as well as house properties. During pendency of said suit, present appellants purchased suit property bearing Survey No.168/2A admeasuring 1H 38R vide sale deed dated 15.06.2011 from original defendant nos.1 to 7. Even after registration of sale deed, appellants were not impleaded as parties to the suit. Finally Regular Civil suit No.99/2002 came to be decreed vide judgment and decree dated 29.06.2013 upholding claim of plaintiffs for partition and separate possession of suit properties.

2. The original defendants nos. 1 to 7, who were the vendors of the present appellants, filed Regular Civil Appeal No.236/2013 before the District Judge, Ahmednagar, while the appellants/purchasers filed Regular Civil Appeal No.250/2013. Both Appeals were taken up for common hearing before learned District Judge and decided under common judgment dated 26.02.2019. Pertinently, Regular Civil Appeal No.236/2013 filed by original defendant nos.1 to 7 has been allowed, thereby setting aside judgment and decree dated 29.06.2013 passed by Civil Judge, Senior Division, Ahmednagar in Regular Civil Suit No.99/2002, whereas Regular Civil Appeal No.250/2013 filed by present appellants/purchasers has been dismissed observing that they are *pendente lite* purchaser having notice of pending litigation, therefore, they cannot be termed as bonafide purchasers for value without notice and cannot assert independent right to assail decree passed against their vendors.

3. Heard learned Advocates appearing for respective parties.

4. Mr. Thigle, learned Advocate appearing for appellants submits that appellants are bonafide purchasers for value without notice. The appellants were not made party in suit. The Appellate Court failed to appreciate aforesaid facts and exercise discretion available under Section 53(A) r/w. Sections 41, 43 to 46 of Transfer of Property Act in judicious manner.

5. Per contra, learned Advocates appearing for respective respondents/original plaintiffs support impugn judgment and decree.

6. Having considered submissions advanced, following substantial questions of law arises for consideration in this Second Appeal:

(I) Whether Appeal at the instance of appellants/purchasers *pendente lite* was maintainable, when vendors of appellants (original defendant nos.1 to 7) had independently challenged decree passed in suit?

(II) Whether Appellate Court had occasioned to delve into merits of contentions of appellants once very decree passed in Regular Civil Suit No.99/2002 has been set aside in sister Appeal filed by vendors of present appellants?

Parties elaborately made submissions on aforesaid substantial questions of law. On their request matter is taken up for final disposal at admission stage.

7. Mr. Thigle, learned Advocate submits that once learned District Judge allowed sister appeal filed by vendors of appellants, there was no occasion for Appellate Court to make further observations in Appeal filed by purchasers. The Appeal filed by

purchasers ought to have been disposed of in terms of decree passed in Appeal filed by vendors/original defendants. He would further submit that dismissal of Appeal filed by purchasers would tantamount to conflicting decrees, when Appeal filed by vendors has been allowed. According to him, once substantive decree passed in Regular Civil Suit No.99/2002 is set aside and suit itself has been dismissed while allowing vendors' Appeal, observations made by Appellate Court against purchasers are otiose/redundant. There was no scope to dismiss Appeal causing unnecessary prejudice to purchasers.

8. The learned Advocates appearing for respective respondents, however, support impugned judgment and decree contending that when defendants were not party to the suit, but filed Appeal against decree, posing themselves as aggrieved persons, Appellate Court was invited to consider merits of Appeal and render findings that appellants cannot be treated as bonafide purchasers without notice. They invite attention of this Court to observations made by learned District Judge that appellants had due notice of pending litigation, but they never chose to get themselves impleaded in pending suit. According to them, dismissal of Appeal would not tantamount to conflicting decree in facts of case.

9. It is trite that, *pendente lite* purchaser would step into shoes of vendors, who are party to proceeding. As long as their vendors

are defending interest in property, *pendente lite* purchaser would not get independent right to participate in proceeding. In given case they may be permitted to participate in the proceeding, so as to ensure smooth execution of decree. In present case, while Regular Civil Suit No.99/2002 was pending before Civil Judge, Junior Division at Ahmednagar, appellants purchased property from defendant nos.1 to 7 under registered sale deed dated 15.06.2011. Later on, decree dated 29.06.2013 for partition and separate possession came to be passed against vendors (defendant nos.1 to 7). They filed Regular Civil Appeal No.236/2013. The appellants/purchasers also filed Regular Civil Appeal No.250/2013. Both Appeals were commonly heard and decided under impugned common judgment and decree. The learned District Judge allowed Regular Civil Appeal No.236/2013 filed by vendors and set aside decree dated 29.06.2013 passed in Regular Civil Suit No.99/2002. Eventually, suit for partition and separate possession has been dismissed. In that view of the matter, independent Appeal filed by purchasers is held to be not maintainable. Once District Judge was of the view that separate Appeal was not maintainable, there was no reason to delve into other contentions raised in Appeal. In fact, appellants could not have any independent right to file Appeal against decree, when their vendors were wholeheartedly defending interest in property. It is only when vendors are no more to defend interest of purchasers or acting in collusion with adversarial party,

independent Appeal against substantive decree at the instance of purchasers could have been entertained. In facts of present case, Appellate Court could have disposed of Regular Civil Appeal No.250/2013 in light of decree passed in Regular Civil Appeal No.236/2013. In result, substantial questions of law framed above are answered accordingly, hence following order:

ORDER

a. Second Appeal is partly allowed.

b. The common judgment and decree dated 26.02.2019 to the extent of dismissal of Regular Civil Appeal No.250/2013, is hereby quashed and set aside.

c. Regular Civil Appeal No.250/2013 shall be treated as disposed of as infructuous in view of judgment and decree in sister Appeal i.e. Regular Civil Appeal No.236/2013.

d. In view of disposal of Second Appeal, pending Civil Applications stand disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025