



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 450 OF 2008

WITH

CIVIL APPLICATION NO. 1023/2015 IN SA/450/2018

WITH

CIVIL APPLICATION NO. 15740/2022 IN SA/450/2018

WITH

CIVIL APPLICATION NO.12289/2014 IN SA/450/2018

- 1) Smt. Shantabai Shridhar Pansare,
Age 84 years, Occ. Nil.
- 2) Smt. Lila Krishnarao Pansare,
Age 69 years, Occ. Nil.
- 3) Smt. Ushabai Bapu Pansare,
Age 56 years, Occ. Household.
- 4) Shri. Ganesh Kishanrao Pansare,
Age 39 years, occ. Agriculture,
All r/o. Takaliwalit Tq. Shrigonda,
Dist. Ahmednagar, at present
147, Shaneshwar Peth, Pune.
- 5) Vidhya d/o Kishanrao Pansare,
Age 58 years, Occ. Housewife,
R/o. 147, Shaneshwar Peth, Pune.
- 6) Mira w/o Dhananjay Wadkar,
Age 57 years, Occ. Housewife,
R/o. Survey No. 44, Hanuman Nagar,
Pond Road, Near Ekta Mitra Mandal,
Kothrud, Ex-Servicemen Colony,
Pune, Tq. & Dist. Pune.

... Appellants
(Orig. Defendants)

VERSUS

Shri. Arun Ankush Nawale,
Age 48 years, Occ. Agricultural,
R/o. Village Takaliwalit Tq. Shrigonda,
Dist. Ahmednagar

... Respondent
(Orig. Plaintiff)

...

SECOND APPEAL NO. 451 OF 2008

Shri. Ganesh Kishanrao Pansare,
Age 39 years, Occ. Agricultural,
R/o. Village Takliwalit, Tq. Shrigonda,
Dist. Ahmednagar.

... **Appellant.**
(Orig. Defendant)

VERSUS

1. Shri. Arun Ankush Nawale,
Age 48 years, Occ. Agricultural,
R/o. Village Takaliwalit, Tq. Shrigonda,
Dist. Ahmednagar.

... **Respondent.**
(Orig. Plaintiff)

...

Mr. Arun G. Dalal, advocate for appellant No. 4.
Mr. G.N. Chincholkar, Advocate for Respondent nos. 5 and 6.
Mr. V.S. Bedre, Advocate for sole respondent

CORAM : SHAILESH P BRAHME, J.

RESERVED ON : 09.12.2025

PRONOUNCED ON : 12.12.2025

JUDGMENT :

Heard both sides finally.

2. Both appeals are emanating from common judgment and decree passed by the Trial Court in Regular Civil Suit No. 164/2001 and Regular Civil Suit No. 177/2004 and thereafter common judgment of Appellate Court in Regular Civil Appeal No. 241/2006 and 250/2006.

3. The facts and evidence on record are common. I propose to decide the appeals by common judgment by referring to the paper book of Second Appeal No. 451/2008, the parties are referred to as to the original status of Regular Civil Suit No. 164/2001.

4. At the outset, it is necessary to clarify that appellant No. 5 and 6 were not parties before the courts below. They had filed application for adding them parties, as appellant nos. 1 to 3 died, and they are the legal

representative, along with appellant no. 4. The appellants were represented by advocate Mr. Dalal, and added appellants are represented by learned counsel Mr. G.N. Chincholkar.

5. Following substantial questions of law were framed by this Court on 08.08.2025 :

“A) Whether the First Appellate Court has committed error in answering the issue with regard to the ownership of the suit property by Pansare, when there was admission of Nawale in his suit that Pansares' are owners of the suit property ?

(B) Whether the First Appellate Court has committed error in decreeing the suit filed by Nawale and dismissing the suit filed by Pansare by considering the evidence in respect of matters which are not pleaded by Nawale ?

(C) Whether the First Appellate Court has committed error in not considering the admitted fact that the possession of the Nawale on the suit property was permissive one ?

(D) Whether the First Appellate Court has committed error in dismissal of suit of Pansare when the title of the Pansare was not in dispute nor there was a dispute with regard the Nawale being in permissive possession of suit property ?

6. The controversy pertains to land Gat No. 7A admeasuring 5-H 17-Are, situated at Takali Kadevalit Tq. Shrigonda, District Ahmednagar, which is presently in the possession of plaintiff Navle. He had filed Regular Civil Suit No. 164/2001 against appellant no. 4 for injunction. The appellants had filed Regular Civil Suit No. 177/2004 for possession against plaintiff Navle. By common judgment and decree dated 23.06.2006, Regular Civil Suit No. 164/2001 was dismissed and Regular Civil Suit No. 177/2004 was decreed. Regular Civil Appeal No. 241/2006 was preferred against decree of Regular Civil Suit No. 177/2004 and Regular Civil Appeal No. 250/2006 was

preferred from decree of Regular Civil Suit No. 164/2001 by plaintiff Navle. The lower appellate Court by common judgment dated 10.03.2008 reversed the decree of Trial Court in both suits thereby granting injunction in favour of plaintiff Navle. This is the track record of the present second appeals.

7. It's the case of plaintiff Navle that the suit land was belonging to Dattatraya Pansare, Bapu Pansare, appellant No. 1 and appellant no. 4 and that was in his possession since 1987-1988. In the year 1993-1994, defendant/Pansare is stated to have agreed to sell the suit land for Rs. 4,25,000/- to plaintiff Navle. Earnest of Rs. 12,000/- was given to the defendant/Pansare. It is further contended that as the suit land was of Devasthan Inam land, permission was required for selling it. It is further contended that from time to time the consideration was paid in installments and plaintiff/Navle developed the land. His possession was obstructed by the defendant Pansare and that was a cause to file suit for injunction simplisitor. On the same pleadings Regular Civil Suit No. 177/2004 filed by defendant Pansare for possession is contested by plaintiff Navle.

8. As against that the claim of the defendant/Pansare is that the suit land was handed over to the plaintiff Navle for the year 1993-1994 on rent of Rs. 12000/-After expiry of the year the possession was resumed by them. In collusion with the revenue authorities record was created by plaintiff Navle showing his possession. The parties were litigating before the revenue forums and reached up to this High Court in Writ Petition No. 2527/2002. It is further contended that the defendant Pansare family are the owners of the suit land and they were in possession. They were dispossessed on 29.06.2004. Hence, Regular Civil Suit No. 177/2004 was filed for possession. On the same pleadings Regular Civil Suit No. 164/2001 was filed by the plaintiff Navle, is contested.

9. After considering oral and documentary evidence on record trial court held that plaintiff/Navle admitted title of the defendant Pansare. It was

agreed between them to sell suit land but no written document was executed. The possession of plaintiff Arun is recorded to be that of trespasser after 1993-1994, hence his suit for injunction was dismissed and decree of possession was passed.

10. The lower Appellate Court by common judgment and decree dated 10.03.2008 recorded that there is no tangible evidence of title of the defendant Pansare. The suit land is recorded to be Devasthan Inam land and Sindiya family was the original owner. The suit for possession is held to be bad for non joinder of necessary parties. It is further recorded that defendant Pansare failed to prove dispossession on 29.06.2004. Hence, the decree in both suits passed by the Trial Court is reversed by the Lower Appellate Court.

11. Learned counsel for the appellant submits that it is a grave error of jurisdiction to hold that defendant Pansare's family are not the owners of the suit land when at various places and in unequivocal pleadings plaintiff Navle admitted their title. It is further submitted that the dispute between Pansare family and Sindiya family was in respect of revenue record and not for ownership of the suit land. Hence, it is perversity to record that Sindiya family was owner and necessary party. It is submitted that Sindiya family did not claim ownership over the suit land and the only owner can be Pansare family.

12. Learned counsel further submitted that when plaintiff/Navle has put forth theory of agreement to sell then the ownership of Pansare family should not have been disputed. It is submitted that possession of plaintiff Navle is unlawful. The judgment and decree passed by the Trial Court should have been upheld. It is further submitted it is not pleaded by plaintiff Navle that Sandiya family was the original owner.

13. Per contra, learned counsel Mr. Bendre appearing for plaintiff Navle supports impugned judgment and decree passed by the lower Appellate

Court. He would submit that his client was cultivating the suit land since 1987 and continuously in possession, which is corroborated by revenue record. He would therefore submit that the suit land was Devasthan Inam land and no document of title was placed on record by Pansare family. It is further submitted that Pansare family miserably failed to prove alleged dispossession on 29.06.2004. It is further submitted that the possession of plaintiff Navle is settled and lawful. It is further submitted that proceedings are pending in the High Court in between Pansare family and Sindiya family. The substantial question of law needs to be answered in his favour.

14. I have considered rival submissions of the parties. With the assistance of both the counsels, I have gone through the record and proceedings also. Plaintiff Navle is in possession of the suit land and injunction is operating in his favour.

15. I have gone through paragraph no. 2 of the plaint of Regular Civil Suit No. 164/2001, paragraph No. 3 of examination in chief of PW. 1-Ankush, PW. 2 Prakash and PW. 3 Suresh. I have also gone through paragraph no. 11 of the written statement of Navle filed in Regular Civil Suit No. 177/2004. These pleadings of Navle unequivocally admits that suit land belongs to Dattatraya Shridhar Pansare, Bapu Shridhar Pansare, Ganesh Krushnarao Pansare- appellant No. 4 and Shantabai Shridhar Pansare-appellant no. 1. Not only that it is own case of Navle that he was inducted in the suit land by above persons and he is cultivating the same. It is admitted by PW 1 Ankush Navle in the cross-examination that Pansare family is the owner of the suit land and he had agreed to purchase the suit land in the year 1993-1994. Mr. Navle and his witnesses admitted that the consideration was fixed at Rs. 4,25,000/- and out of that Rs. 12,000/- was paid to Pansare family and further installments were paid, to them aggregating Rs. 3,00,000/-.

16. It has been nowhere pleaded or brought on record from the depositions of Mr. Navle and his witnesses that members of Pansare family

were not the owners of the suit land and it was ownership of either any Devasthan or Sindiya family. His plaint in Regular Civil Suit No. 164/2001 does not spell out any plea that the ownership of the suit land was of any third person. Under these circumstances when ownership of the members of Pansare family is admitted by Mr. Navle, the lower Appellate Court committed grave error of jurisdiction in holding that no tangible material is placed on record to show ownership of Pansre family.

17. Its a case where the ownership was not in dispute. Presuming that the title was disputed by Mr. Navle, then instead of filing Regular Civil Suit No. 164/2001, simplicitor for injunction he should have claimed relief of declaration. His possession was challenged by Pansare family in the said suit. His suit for injunction simplicitor is defective one, in the wake of law laid down by the Supreme Court in **Annathula Sudhakar Vs. P. Buchhi Reddy; AIR 2008 Supreme Court 2033**. This aspect of the matter is lost sight of by both Courts below. Hence, the substantial questions formulated in terms of 'A' and 'B' needs to be answered in favour of Pansare family.

18. Plaintiff Navle is recorded to be in continuous possession of the suit land. He claims to be purchaser. It is admitted that no agreement was executed between the parties and filed on record. In the absence of any written agreement his possession cannot be protected under Section 53A of the Transfer of Property Act. He has not even filed suit for specific performance of contract. He enjoyed possession without taking proper recourse of law. The ownership is that of Pansare family. In such circumstances, he failed to show validity of his possession.

19. Its a trite law that a person in settled possession cannot be dispossessed without following due process of law. Regular Civil Suit No. 177/2004 preferred by Pansare family for possession is due process of law to secure possession. There is no material on record to show that after 1993-1994, the possession of Mr. Navle culminated in lawful possession. Though

Pansare family failed to prove dispossession on 29.06.2004, it does not make any difference. I am of the considered view that Navle is liable to hand over possession and decree passed by the Trial Court is legal and valid.

20. It is tried to be pointed out by learned counsel Mr. Bedre that proceedings are pending between Pansare family and Sindiya family in High Court. It is tried to be contended that the suit land is the Devasthan Inam land. No material is placed on record to show that erstwhile owner Sindiya family has ever claimed ownership and title over the suit land. Writ petition No. 2527/2002 is arising out of the revenue proceedings. No substantive proceedings have been filed by Sindiya family claiming title over the suit land against Pansare family. Neither was any claim of possession on title was made by them. Hence, it is patent illegality to non suit Pansare family for non joinder of necessary parties.

21. I have already recorded my finding that possession of plaintiff Navle is unlawful after 1993-1994. Initially his possession can be said to be permissive when he was inducted by Pansare family. Later on, in the absence of any attempt to secure the title by resorting to suit for specific performance of contract, the possession cannot be said to be lawful. The substantial questions of law in terms of 'C' and 'D' have to be answered in favour of Pansare family.

22. For the aforesaid reasons, I find that the common judgment and decree passed by the lower Appellate Court is unsustainable and I pass following order.

ORDER

- (i) Common judgment and order dated 10.03.2008 passed by lower Appellate Court in Regular Civil Appeal No. 241/2006 and Regular Civil Appeal No. 250/2006 are quashed and set aside.

(ii) Common judgment and decree dated 23.06.2001 passed by Jt. Civil Judge, Junior Division, Shrigonda dismissing Regular Civil Suit No. 164/2001 and decreeing the Regular Civil Suit No. 177/2004 shall stand restored and upheld.

(iii) The possession shall be handed over by plaintiff Navle to Pansare family within a period of one month.

(iv) Decree be drawn accordingly.

23. Pending Civil Applications are disposed of.

(SHAILESH P. BRAHME, J.)

mkd/-