



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

Second Appeal No. 620 Of 2023

With

Civil Application No.15377 Of 2023

1. Shaikh Maheboob Shaikh Mahemood,
Deceased Through His Legal Heirs
- 1-A) Shaikh Yasin Shaikh Maheboob,
Age : 38 years, Occupation : Agriculturist,
- 1-B) Shaikh Mosin Shaikh Maheboob,
Age : 53 years, Occupation : Agriculturist,
2. Aminabi Shaikh Maheboob,
Age : 38 years, Occupation : Agriculturist,
3. Shaikh Asif Shaikh Maheboob,
Age : 46 years, Occupation : Agriculturist,
4. Hasinabi Shaikh Maheboob,
Age : 37 years, Occupation : Housewife.

All R/o : Anwa, Taluka : Bhokardan, District Jalna. .. **Appellants**

Versus

Mahammadkhans/o. Kalekhan,
Age : 56 years, Occupation : Agriculturist,
R/o : Anwa, Taluka : Bhokardan,
District Jalna.

.. **Respondent**

- * Mr. Ganesh V. Mohekar, Advocate for the Appellants.
- * Mr. K. A. Ingle, Advocate for Respondent.

CORAM : SHAILESH P. BRAHME, J.

DATE : 3rd JULY 2025

FINAL ORDER :

. Heard both sides.

2. The Appellant is assailing judgment and decree passed by the Lower Appellate Court in RCA No.76/2017 reversing judgment and decree of the trial Court passed in RCS No.183/2009. Respondent had filed suit for possession of Gram Panchayat property No.518 situated at Village Anwa, Taluka Bhokardan. It was dismissed by the trial Court and thereafter decree was reversed by Lower Appellate Court.

3. Respondent had filed suit for possession contending that he had purchased suit property on 23.02.2000 from Shaikh Gani Shaikh Mehtab. It was contended that Appellant was obstructing him and he was dispossessed on 01.09.2008.

4. Appellant contested the suit on the ground that sale deed was executed on 24.08.1982 in his favour and he was in possession of the same since then. The original owner of suit property was Shaikh Mehtab Shaikh Jilani. The sale deed of 23.02.2000 is bogus. It is further contended that continuously he is in possession of the suit house. Respondent had even filed a false suit of 89/2007 which was withdrawn.

5. Trial Court dismissed the suit mainly because after demise of original owner his heirs Shaikh Gani and Ayurabi inherited the

suit property. It was purchased by the Respondent by two sale deeds executed in 1998 and thereafter 2000. Because of two registration numbers of property namely 518 and 526, trial Court entertained a doubt over the claim of the Respondent and non-suited him. The Lower Appellate Court held that registration nos.518 and 526 are for the same. Considering four boundaries of the sale deed of Exhibits 47 and 33, Respondent was held to be the owner.

6. Pertinently both the Courts below held that alleged sale deed dated 24.08.1982, Exhibit-67, is inconsequential for want of registration, albeit it was impounded and stamped.

7. Learned Counsel for the Appellant has pressed into service the substantial questions of law enumerated in the appeal memo as well as amended grounds. It is vehemently submitted by learned Counsel that sale deed Exhibit-67 by which the suit property was purchased is admissible and reliable one. It is submitted that Section 49 of Registration Act is not hurdle as sale deed is for collateral purpose. It is vehemently contended that possession of the Appellant since 24.08.1982 was not that of encroacher, but in pursuance of sale deed Exhibit-67. It is submitted that suit was not tenable. It is further contended that Respondent purchased it from Shaikh Gani who was not the exclusive owner. Ayurabi was the absolute owner and her name was muted in the record of right at the time of executing Exhibit-67. My attention is also adverted to issue no.2 framed by the trial Court on 03.09.2010 which was not dealt with.

8. Per contra, learned Counsel for the Respondent supports impugned judgment and decree. He would submit that after demise of Shaikh Mehtab, his son Shaikh Gani inherited the property. My attention is adverted to the sale deed Exhibits-33 and 47 to show that four boundaries described therein, are absolutely consistent. He would submit that present suit cannot be said to be for collateral purpose and for want of registration, no title could vest in the Appellant. It is further submitted that Appellant did not challenge the sale deeds of the respondent. A reliance is placed on the judgment in the matter of **Jamila Begum (D) Thr. L.Rs. Vs. Shami Mohd. (D) Thr. L.Rs. And Another**, 2019(4) Mh.L.J. 500.

9. I have considered rival submissions of the parties. Respondent has placed on record sale deed dated 22.06.1998, (Exhibits-33) and dated 23.02.2000 (Exhibits-47). Both of them were executed by Shaikh Gani Shaikh Mehtab. Four boundaries mentioned in both sale deeds would indicate that suit property was purchased by the Respondent in two parts and there is no consistency in the description of the suit property. Both the sale deeds have not been challenged by the Appellant. The suit property was initially bearing house no.518 and thereafter it was given 526. The Lower Appellate Court recorded finding after comparing four boundaries of the property mentioned in sale deeds. There is no inconsistency or any confusion in respect of the suit property. The vendor of the Respondent – Shaikh Gani, despite having knowledge of the sale deeds Exhibits-33 and 47 did not object them. Affidavit of the vendor at Exhibit-46 has

been duly considered by the Lower Appellate Court. The Respondent's ownership has been established over the suit property.

10. Appellants' case is based on unregistered sale deed dated 24.08.1982. Though it was impounded, for want of registration, it would not enure to their benefit. No title can vest on the basis of unregistered document by implication of Section 49 of Registration Act. Appellant is defending the suit on the basis of his title acquired by sale deed dated 24.08.1982, Exhibit-67. There is a direct contest between the parties over the title and possession of the property. It cannot be said that for the collateral purpose, the said sale deed is pressed into service. Both the Courts below have rightly drawn the conclusion in respect of sale deed Exhibit-67. I do not find any perversity or patent illegality in the finding.

11. Appellants do not hold title and is in possession of the suit property. As against that Respondent succeeded in proving his title on the basis of Exhibits-33 and 47. He is entitled to receive possession from the Appellants. When matter was in the trial Court, issue no.2 was framed on 03.09.2010. The judgment and order passed by the trial Court shows slightly different issue in Marathi script. There is a variance in the original issue and the final issue. But in the text of the judgment, trial Court has rightly dealt with the facts in issues. No prejudice can be said to have been caused to the Appellants. At the most, it can be termed to be irregularity. The submission of the Appellants in this regard, has no merit.

12. Learned Counsel for the Respondent has placed reliance on the judgment of Jamila Begum (D) Thr. L.Rs. (supra). My attention is adverted to Paragraph No.14 to buttress that registered document carries presumption that it was validly executed. The principles can be made applicable to the present case. Unregistered sale deed in the present matter cannot support Appellants' case.

13. In view of the aforesaid reasons, I find no merit in the Second Appeal. Second Appeal is dismissed.

14. Civil Application is disposed of.

**SHAILESH P. BRAHME
JUDGE**

Najeesh..