



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.594 OF 2019

- 1] Shailesh Kevalchand Pagariya
Age Major, Occu: Business & Agri.
R/ 5, Mahavir Housing Society,
Mohadi Road, Jalgaon.
Tq. & Dist. Jalgaon.

...APPELLANT
(Orig. Deft. No.9)

VERSUS

- 1) Bansilal Arjun Wagh,
Age 59 years, Occu: Agri.
- 2) Arjun Prbhat Wagh (Dead)
- 3) Waman Arjun Wagh
Age 62 years, Occu: Agri.
- 4) Ganesh Arjun Wagh
Age 51 years, Occu: Agri.
- 5) Dattatraya Arjun Wagh,
Age 54 years, Occu: Agri.
Respondent Nos.1 to 6 R/o Talai, Tal. Erandol,
District Jalgaon.
- 7) Lilabai Jagannath Patil (Dead)
Through: L.Rs.
- 7-a) Kishor Jagannath Tahasildar
Age Major, Occu: Labour.
R/o Near Shivneri Gate,
Behind National Bakery, Pachora Road,
Bhadgaon. Tq. Bhadgaon.

District Jalgaon.

- 7-b) Sau. Sangita Prakash Pawar,
Age Major, Occu: Household,
R/o C/o Prakash Dhudku Pawar,
Near Shivneri Gate, Behind National Bakery,
Pachora Road, Bhadgaon,
Tal. Bhadgaon. District Jalgaon.
- 7-c) Sau. Vandana Dilip Chavan
Age Major, Occu: Household,
R/o C/o Dilip Jagannath Chavan,
At Post Adavad, Tal. Chopda,
District Jalgaon.
- 7-d) Sau. Sushma Sunil More
Age Major, Occu: Household,
R/o C/o Sunil Shaligram More,
At Post Sakur, Tal. Malegaon. District Nasik.
- 8) Vikram Mohan Patil,
Age Major, Occu: Agri.
R/o Bhatia Lane, Kasoda,
Tal. Erandol, Dist. Jalgaon.
- 9) Mohandas Budha Mahajan,
Age Major, Occu: Agri.
R/o Adgaon, Tal. Erandol.
District Jalgaon.
- 10) Rajendra Sakharam Mahajan
Age Major, Occu: Agri.
R/o Talai, Tal. Erandol.
District Jalgaon.

...Respondents

(Original Defendants. Nos.1 to 8 and 10)

Advocate for Appellants : Mr.Tapan K.Sant

CORAM : SHAILESH P. BRAHME, J.

DATE : 26.08.2025

FINAL ORDER :

1 Present appeal is preferred against concurrent findings of facts. Appellant is original defendant No.9 in R.C.S No. 149 of 1996 filed by Respondent No.1/Bansilal for perpetual injunction.

2. It's a case of Respondent No.1/plaintiff that suit properties are ancestral and defendant Nos.1 to 6 are co-sharers. The defendant No.1 i.e present Respondent No.2 took disadvantage of his position and alienated the suit properties on different dates. The suit land gat No.503 was alienated on 15.12.1999 by the defendant No.1 to defendant No.7/Vikram. The defendant No.7/Vikram further sold it to defendant No.8 on 13.07.2000. The defendant No.8 sold it to appellant on 22.12.2004 alongwith other suit lands. The alienations are not binding. The defendant No.1 had no authority to alienate the properties.

3. Appellant filed written statements but did not lead any evidence. He did not conduct cross-examination of the witnesses of the plaintiffs. Considering oral evidence of the plaintiff, suit was

decreed partly on 21.12.2011 awarding 1/6th share to the plaintiff and further granting relief of declaration that transactions of the suit lands are not binding on the plaintiffs.

4. Being aggrieved appellant preferred R.C.A No.31 of 2015. He agitated that he was not given opportunity of hearing but the plea is negatived by recording reasons. It is specifically recorded by appellate court that *lis pendens* was registered and despite that appellant purchased gat No.503 during pendency of the suit.

5. By elaborate reasons, appeal is dismissed.

6. Learned counsel for the appellant Mr.Tapan Sant submits that appellant was not given due opportunity of conducting cross-examination and leading evidence. It is submitted that appellant was subsequently added in the suit. The procedure adopted by the trial court in permitting the plaintiff to file different affidavits of examination-in-chief is arbitrary and illegal. It is further submitted that during pendency of appeal, protection to the extent of 9 plots was granted to appellant vide order dated 13.02.2019 passed in Writ Petition No.6700 of 2018 and same needs to be continued. It is further submitted that equities will have to be adjusted as against the shares of predecessors-in-title of land gat No.503.

7. I have gone through judgments of both the courts below. Respondent No.1/plaintiff adduced his oral evidence and produced voluminous documents to show that as to how the suit lands changed the hands. It is undisputed that land Gat No.503 was sold by Respondent No.1 i.e defendant No.1 to defendant No.7. The defendant No.7 sold it to defendant No.8 and finally defendant No.8 sold it to defendant No.9 i.e appellant on 22.11.2004. It is pertinent to note that the alienations are during pendency of the suit filed by the Respondent No.1. R.C.S No.149 of 1996 was filed on 30.09.1996. It was amended on 02.12.2009 impleading the present appellant. After impleading the appellant twice, the affidavit in lieu of examination-in-chief was filed by the Respondent No.1 at Exhibit-24 on 05.07.2011 and at Exhibit-159 on 19.11.2011. No endeavour was made by appellant to cross-examine the Respondent No.1. He continuously remained absent. I do not find that any case is made out for extending further opportunities of hearing to the appellant. He failed to avail the opportunity. There are lapses on his parts. The submissions regarding violation of principles of natural justice *sans* merit.

8. Pertinently, *les pendens* was registered on 06.11.1997 under Section 52 of Transfer of Property Act. A notice of registration at Exhibit-139 dated 06.11.1997 is produced on record. Despite that the

lands were alienated on different dates including suit land Gat No.503. Appellant purchased it on 22.12.2004 from the defendant No.8. He is bound by the decision. He ran risk in purchasing the property. There was already registration of the suit which is evident from the Exhibit-139. He is estopped from claiming any independent right. He is not a bona-fide purchaser.

9. I find no substance in the substantial questions of law posed before this Court and the submissions of learned counsel for the appellant. The protection given by High Court in Writ Petition No.6700 of 2018 was operative till decision of the appeal and that was not in perpetuity. At the cost of repetition, it needs to be stated that appellant ran risk in purchasing the plots. He is estopped from claiming adjustment of equities as against the shares allotted to the Respondent No.2/defendant No.1.

10. I find no merit in the second appeal.

11. Second Appeal is dismissed.

[SHAILESH P. BRAHME, J.]

vsj