



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

SECOND APPEAL NO. 672 OF 2016

Hanmant Haribhau Dumal
and others .. Appellants

Versus

Balasaheb Gundiba Alte .. Respondent

Shri S. S. Halkude, Advocate for the Appellants.
Shri Dhananjay Deshpande, Advocate for the Respondent.

**WITH
CIVIL APPLICATION NO. 11995 OF 2025
IN
SECOND APPEAL NO. 672 OF 2016**

Hanmant Haribhau Dumal
and others .. Applicants

Versus

Balasaheb Gundiba Alte .. Respondent

Shri S. S. Halkude, Advocate for the Applicants.
Shri Dhananjay Deshpande, Advocate for the Respondent.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 19TH NOVEMBER, 2025.**

FINAL ORDER :

. Heard both sides.

2. Appellants are the original defendants, who suffered decree

passed by the Trial Court for perpetual and mandatory injunction in R.C.S. No. 682 of 2006, which is confirmed in R.C.A. No. 243 of 2011. Learned counsel Mr. Halkude for the appellants has tendered on record following substantial questions of law, which were not incorporated in the appeal.

- (i) Whether possession of the defendant can be protected when both the plaintiff and defendants have failed to prove the title over the suit plot when the defendants are in settled possession ?
- (ii) Whether in view of Sec. 55 of the Maharashtra Village Panchayat Act, sale of immovable property (suit plot) of Gram Panchayat without prior permission of the Chief Executive Officer is valid ?
- (iii) Whether it is necessary for plaintiff by amendment to seek relief of declaration of ownership of suit property when defendants denied title of the plaintiff over suit property in the suit for mandatory injunction and possession ? If amendment seeking declaration of title not made and issue of title is not framed, whether suit is maintainable ?

3. Mr, Halkude, learned advocate for the appellants canvassed that above substantial questions of law are involved in second appeal and second appeal needs admission. It is submitted that defendants are having long standing possession. The findings recorded by the Courts below are perverse and

patently illegal. It is further submitted that the suit plot has not been properly identified and, therefore, recourse can be taken to Order XXVI Rule 9 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C.P.C."). The Civil Application No. 11995 of 2025 for additional evidence is pressed into service. The documents annexed to the application need to be considered. The defendant No. 1 was suffering from disability and unable to step into witness box.

4. Learned counsel Mr. Dhananjay Deshpande appearing for the respondent supports the judgments of the Courts below. It is submitted that the substantial questions of law have no foundation and those cannot be treated to be substantial questions of law. It is submitted that in earlier round of litigation the claim of the defendants was rejected in R.C.A. No. 94 of 1998, which is confirmed by the High Court in Second Appeal No. 1094 of 2004. The defendants are re-agitating the issues, when ownership of the plaintiff has been confirmed.

5. The paper books of the previous round of litigation as well as present second appeal are placed on record. The respondent has also placed on record judgment of the Coordinate Bench in Second Appeal No. 1094 of 2004.

6. The controversy pertains to Gram Panchayat House No. 356/4 situated at village Murud. The defendants house is on the west of the suit plot. Plaintiff was allotted plot by the Gram

Panchayat in an auction. A resolution to that effect was passed by the Gram Panchayat. Plaintiff secured permission for construction in the year 1995. The defendants were encroaching the suit plot and causing obstruction and R.C.S. No. 682 of 2006 was required to be filed for mandatory injunction and possession.

7. The defendants had filed Spl. C. S. No. 52 of 1996 for declaration and injunction. They claimed to be owners of Gram Panchayat House No. 356/3. It was contested by the present plaintiff. The Trial Court had decreed the suit on 24.06.1998. Being aggrieved R.C.A. No. 94 of 1998 was filed and appeal was allowed. The decree is further confirmed by the High Court in Second Appeal No. 1094 of 2004 vide judgment dated 02nd March, 2009. In earlier round of litigation it was recorded that present plaintiff was allotted house in auction held in the year 1993 and the dispossession of the present plaintiff was also noticed.

8. I have gone through the judgment passed by both the Courts below. The Trial Court recorded categorical findings upholding the title of the plaintiff over the suit plot which was conferred on him on 11.11.1993 by payment of Rs. 27,950/-. Simultaneously the findings recorded against the defendants in earlier round of litigation are also noted. The certificate at Exhibit 104 pressed into service by the defendants is discarded by assigning reasons. Four boundaries given in the written statement and given in Exhibit 104 do not tally. The findings are confirmed by the lower Appellate Court.

9. The findings recorded by the Courts below cannot be termed as perverse or illegal. The appellants are unable to point out that any fact in issue left to be undecided. The substantial questions of law referred above have no foundation. Those pleas were not agitated before the Courts below. I find no merit to treat them as substantial questions of law.

10. Having suffered adjudication in the earlier round of litigation, it was not necessary for the present plaintiff to claim further relief of declaration. The judgment of the Supreme Court cited by the appellants in the matter of Kayalulla Parambath Moidu Haji Vs. Namboodyil Vinodan reported in *(2022) 20 SCC 310* cannot enure to the benefit of the appellants. The facts are distinguishable. Another judgment of the Supreme Court in the matter of M. Kallap Setty Vs. M. V. Lakshminarayan Rao reported in *AIR 1972 SC 2299*, relied by the appellants can also be of no assistance because in the present case plaintiff has established his title.

11. Mr. Deshpande, learned counsel for the respondent has relied on the judgment of the Supreme Court in the matter of P. Kishore Kumar Vs. Vittal K. Patkar reported in *(2024) 13 SCC 553*. In view of the ratio laid down therein plaintiff has established his title and the High Court is not expected to conduct a third trial on facts. This judgment is supporting his submissions. Further reliance is placed on the judgment of the Supreme Court in the matter of Vishram @ Prasad Govekar and others Vs. Sudesh Govekar (Dead)

by L.Rs. and others reported in (2017) 11 SCC 345. In the present case also defendants are obstructing the possession illegally. They have tress passed on the properties and the decree of mandatory injunction has been rightly passed.

12. By way of separate application, appellant is invoking Order XLI Rule 27 of the C. P. C. for relying on the documents as additional evidence. The defendants received information vide letter dated 11.09.2025 from the Gram Panchayat. It is not made clear as to why such a information was not solicited earlier and relevant papers were not placed before the Trial Court. The revenue record which is produced at Exhibit B of the application could have been placed before the Trial Court. It is not possible to go into the disability certificate for the first time in High Court. I find no merit in the application and it is liable to be rejected.

13. For the reasons recorded above, there is no merit in the second appeal. Second appeal stands dismissed. The Civil Application No. 11995 of 2025 is rejected.

[SHAILESH P. BRAHME J.]

bsb/Nov. 25