

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.194 OF 2020
WITH
INTERIM APPLICATION NO.10882 OF 2024
WITH
CIVIL APPLICATION NO.180 OF 2020
IN
SECOND APPEAL NO.194 OF 2020**

1. Gorakh Dagdu Maharnavar
Age: 55 years, Occu: Agri
R/o Sonake, Taluka Pandharpur,
Dist. Solapur.
2. Pandharinath Balu Maharnavar,
Age: 55 years, Occu: Agri
R/o Sonake, Taluka Pandharpur
Dist. Solapur.
Deceased through legal heirs.
- 2A] Vilas Pandharinath Maharnavar,
Age: 45 years, Occu: Agri
R/o Sonake, Taluka Pandharpur
Dist. Solapur.
- 2B] Madhukar Pandharinath Maharnavar,
Age: 33 years, Occu: Agri
R/o Sonake, Taluka Pandharpur
Dist. Solapur.
- 2C] Smt. Indirabai Pandharinath Maharnavar
Deceased through L.Rs.
- 2D] Sou. Housabai Basveshwar Hande
Age: 52 years, Occu: Agri
R/o Palashi, Taluka Pandharpur,
Dist. Solapur.
- 2E] Sou. Shevantabai Machindra Shelke
Age: 55 years, Occu: Agri
R/o Sonake, Taluka Pandharpur,
Dist. Solapur.

2EE] Sou. Ambubai Madhukar Shelke,
Age: 50 years, Occu: Agri & Household
R/o Sonake, Taluka Pandharpur,
Dist. Solapur.

2F] Vimal Laxman Mane
Age: Adult, Occu: Agri
R/o Yadrav, Taluka Pandharpur
Dist. Solapur.

3. Yashwant Dagdu Maharnvar
Age: 28 years, Occu Agri

4. Shamrao Dagadu Maharnavar,
Age: 30 years, Occu Agri

5. Suman Sitaram Chaugule,
Age: 30 years, Occu: Agri,
3 to 6 R/o Khupsungi, Taluka
Pandharpur Dist. Solapur.

6. Kamal Dattu Kolekar
Age: 27 Occu: Agri
R/o Yadrav, Taluka Pandharpur
Dist. Solapur.

7. Sindumati Bapu Mane
Age: 55 years, Occu: Agri
R/o Yadrav, Taluka Pandharpur
Dist. Solapur.

Appellants/
Def. Nos.1 to 7.

Versus

Jaganath Sawala Rajmane,
Deceased through his LR

1. Gorakh Jaganath Rajmane
(Deceased through legal heirs)

1A] Smt. Sakhubai Gorakh Rajmane
Age: 53 yers, Occu: Agri
R/o Palashi, Taluka Pandharpur,
Dist. Solapur.

1B] Appasaheb Gorakh Rajmane
Age: 35 years, Occu: Agri
R/o Palashi, Taluka Pandharpur
Dist. Solapur.

- 1C] Sou. Neeta Prakash Balate
Age: 30 years, Occu: Household/ Agri
R/o Tanu Takli, Taluka Indapur
Dist. Pune.
2. Satyawar Jagannath Rajmane
Deceased through legal heirs.
- 2A] Mangal Satyawar Rajmane
Age: 45 Occu: Household
R/o Palashi, Taluka Pandharpur
Dist. Solapur.
- 2B] Shivling Satyawar Rajmane
Age: 30 Occu: Agri
R/o Palashi, Taluka Pandharpur
Dist. Solapur.
- 2C] Vijay Satyawar Rajmane
Age: 25 Occu: Agri
R/o Palashi, Taluka Pandharpur
Dist. Solapur.
- 2D] Sou. Sunita Devidas Nagare
Age: 27 Occu: Household
R/o Mendhpur, Taluka Pandharpur,
Dist. Solapur.
3. Dinkar Jagannath Rajmane
Age: 46 years, Occu: Agri
R/o Palashi, Taluka Pandharpur
Dist. Solapur
4. Raghunath Jagannath Rajmane,
age 43 years, Occ. Agri,
R/o Palashi, Tq Pandharpur,
District Solapur.
5. Martand Jagannath Rajmane,
age 40 years, Occ. Agri,
R/o Palashi, Tq. Pandharpur,
District Solapur.
6. Seetabai Dnyaneshwar Hingmire,
age 38 years, Occ. Household,
R/o Narayan Chincholi, Taluka
Pandharpur, District Solapur.

7. Gunabai co. Dagadu Maharnavar,
age 45 years, Occ. Agri,
R/o Sonake, Taluka Pandharpur,
District Solapur.
8. Indirabai Martand Karande,
(deleted), age 40 years, Occ. Agri,
R/o Muhud Bk., Tal Sangola.
9. Bayadabai Co-Govind Shelke,
deleted age 40 years, occ. Household,
R/o Deokatewadi, Tq. Pandharpur,
District Solapur.
10. Kalawati Co-Mallikarjun Ligade,
age 55 years, Occ. Household,
R/o Deokatewadi, Tq. Pandharpur,
District Solapur.
11. Taramati Co. Sidling Ligade,
age 32 years, Occ. Household,
R/o Palashi, Tq. Pandharpur,
Dist. Solapur.

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Advocate for Appellants : Mr. Ajay Joshi
AGP for Respondents 1,2 : Mr. Aniruddha Valsangkar a/w Shriram M.
Walekar i/b Mr. Samir Kumkhakoni

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CORAM : S. G. CHAPALGAONKAR, J.
Reserved on : 30th September 30, 2025.
Pronounced on : 06th November, 2025.

JUDGMENT :-

1. The appellants (original defendant nos.1 to 7) impugn judgment and decree dated 13.11.2018, passed by District Judge-Pandharpur, in Regular Civil Appeal No.132 of 2008, thereby reversing judgment and decree passed by Trial Court in Regular Civil Suit No.385 of 1977, instituted by respondent nos.1 to 6 (plaintiffs).

2. Brief facts, giving rise to the present second appeal are as under:-

Land survey no.136 situated at Palshi Tq. Pandharpur, District Solapur was originally owned by the plaintiff's father namely Savla Krushna Rajmane. On 21.3.1959, he sold area to the extent of 6 acres to father of defendant no.1 i.e. late Balu Babu Maharnavar under registered sale deed. The plaintiff's father sold another portion of 9 acres land to one Sopan and continued in possession of balance 5 acres land till year 1968. In year 1968 consolidation scheme was implemented. Father of defendant no.1 Balu was shown in possession of 11 acres of land including 6 acres sold by plaintiff's father. The gat no.587 was formed in respect of 11 acres area shown in possession of father of defendant no.1 late Balu.

3. It is contention of plaintiffs that Consolidation Officer acted beyond his authority and merged area of 5 Acres owned by plaintiff's father in block no.587 and shown entire land in name of father of defendant no.1. Taking disadvantage of incorrect and defective consolidation record, defendant is illegally cultivating plaintiffs land to the extent of 5 Acres (2 Hectors). In this background, plaintiffs claimed relief of declaration of ownership and perpetual injunction.

4. The defendants filed written statement and refuted plaintiffs claim. It is their contention that prior to execution of sale deed, an

agreement to sale dated 09.08.1955 was executed by plaintiff's father in favour of Balu. It was an agreement for 11 acres land. The Plaintiff or their father never cultivated suit land for last 23 years. The defendants are in continuous possession without any disturbance and acquired ownership by way of adverse possession. The suit is barred by limitation. It is further pleaded that although sale deed depicts transfer of area to the extent of 6 Acres, transaction was for entire area of 11 acres as per boundaries shown in sale deed. The Consolidation Officer has acted as per procedure. The act of Consolidation Officer cannot be questioned in suit.

5. The Trial Court framed issues based on pleadings of parties, recorded evidence and finally dismissed suit holding that suit is barred by limitation. The plaintiffs failed to prove their ownership, whereas defendants have acquired ownership by way of adverse possession over suit land.

6. Aggrieved plaintiffs filed Appeal before District Judge, at Pandharpur. The District Judge after hearing parties, allowed Appeal and declared that plaintiffs are owners of suit property. Eventually, directed defendants to hand over possession within period of two months. Further, ordered inquiry in respect of mesne profit under Order XX Rule 12 of Code of Civil Procedure. Hence, this Second Appeal is filed by original defendants nos. 1 to 7.

7. Mr. Ajay Joshi, learned advocate appearing for appellants submits that decree of declaration of ownership is passed without existing proof of ownership of plaintiffs over suit property. The consolidation scheme was implemented at village Palshi in year 1968. The scheme has been enforced under Section 20 of Consolidation Act. The name of appellants/original defendants is recorded as owners of gat no.587 admeasuring 11 Acres. Plaintiffs never challenged scheme. The jurisdiction of Civil Court is otherwise barred under Section 36-A of Consolidation Act to decide or deal with any question, which is by or under Consolidation Act required to be settled, decided or dealt with by State Government or any officer or authority. However, Appellate Court has ventured into validity of orders passed by Consolidation Officer and recorded contrary findings. According to Mr. Joshi, issue of bar of jurisdiction of Civil Court as well as bar of limitation raises substantial questions of law in this Appeal and same needs to be admitted.

8. In support of his contentions, Mr. Joshi relies upon observations of Supreme Court of India in case of **Rajeev Gupta and Others Vs. Prashant Garg and Others (Civil Appeal No.11061 of 2024** decided on **23.04.2025**).

9. Per contra, Mr. Aniruddha Valsangkar, learned advocate appearing for respondents/plaintiffs supports impugned judgment

and decree. He would submit that admittedly Savla Krushna Rajmane was owner of suit property. He transferred 6 acres land to father of defendant no.1 i.e Balu Babu Maharnarvar under registered sale deed date 21.03.1959. However, he has been shown as owner of 11 acres land after implementation of consolidation scheme forming gat no.587. The Consolidation Officer acted beyond his jurisdiction. The ownership or title of suit property continued with plaintiffs. Defendants acquired possession on the basis of incorrect consolidation record. The suit has been instituted for declaration of ownership and possession based on title. The defendant failed to prove acquisition of ownership by way of adverse possession. The bar under section 36A of Consolidation Act does not operate in facts of present case as issue of title can be dealt with only by Civil Court. The defendants cannot acquire title on the basis of illegal mutation entry carried forward by Consolidation Officer. The Appellate Court has dealt with all relevant aspects and rightly decreed suit. In support of his contentions he relies upon observations of Supreme Court in case of ***Sopan Rao and another Vs. Syed Mehmood (Civil Appeal No.4478 of 2007*** decided on ***3.7.2019***) and observations of Division Bench of this Court in case of ***Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhilare***¹ and observations of Single Judge of this Court in case of ***Avantika Bai Shankar Shinde Vs. Pratap Gunderao Jadhav***².

1 2001 (4) Mh.L.J. 31.

2 2024 (6) Mh.L.J. 70.

10. Having considered submissions advanced and after going through record tendered into service before this Court, it can be observed that respondents/plaintiffs have instituted suit for declaration of ownership and possession of 5 acres land, which is part and parcel of gat no.587 (previously Survey No.136/3). Before implementation of consolidation scheme, entire Survey No. 136 was owned by Savala Rajmane. The defendants are claiming ownership based on registered sale deed dated 21.3.1959 executed by Savala i.e. plaintiffs' father. The said transaction clearly depicts that only 6 acres land was transferred to Balu by Savala. The sale deed has been admitted in evidence. Both parties have relied upon contents of sale deed.

11. The consolidation scheme has been implemented in year 1968, wherein defendants are shown as owner and possessor of 11 acres of land forming gat no.587 (original Survey No.136/3). The defendants are claiming title over additional 5 acres land beyond purchased by Balu from Savla. Firstly, under premise that sale deed was executed as per boundaries, which covers entire area of 11 acres and same was put into possession of Balu. Secondly, they acquired title of 5 acres additional area by way of adverse possession.

12. If plaintiffs are claiming title on the basis of sale deed, particularly, as per boundaries specified in sale deed, which according

to them covers entire 11 acres area, they cannot raise claim of adverse possession. If defendants wish to make out case of adverse possession, they will have to admit title of plaintiffs. The defendants cannot carry forward self destroying pleas. In present case, pleadings in written statement does not show that defendants have raised alternative plea of adverse possession while asserting their own title.

13. The sale deed dated 11.03.1959 confers title of defendants over area to the extent of 6 acres situated at East-South corner out of land Survey No.136. The defendants endeavor to contend that prior to execution of sale deed, there was an agreement dated 09.08.1955 and Savala had agreed to sell 11 acres of land. However, copy of agreement to sale is not filed on record. The contents thereof are not proved. Even otherwise, on the basis of agreement to sale, which was ultimately culminated into sale deed of 11.03.1959, title of only 6 acres area has been passed on to defendants. In this background, Appellate Court is justified in observing that plaintiffs have proved their title over suit land i.e. area of 5 acres illegally possessed by defendants in addition to 6 acres land purchased from Savala under sale deed of 1959.

14. Mr. Joshi, learned advocate appearing for appellants endeavors to contend that suit is barred by limitation. Admittedly, plaintiffs are claiming their title over suit property and consequential relief of

possession on the basis of title. Article 65 of limitation Act would apply in facts of the case. Limitation of 12 years has been provided for instituting suit for possession of immovable property based on title. Period of 12 years would reckoned from date when possession of defendants over land becomes adverse to plaintiffs. Although, defendants have pleaded in written statement that they are in continuous possession for more than 23 years prior to institution of suit, nothing is brought on record as to when defendants have actually acquired possession. Assuming that defendants acquired possession from date of sale deed in year 1959 as per recitals therein, it would be only as regards to 6 acres land. No specific pleadings are brought on record as to when defendants acquired possession of suit property in addition to 6 acres area purchased under sale deed of 1959. At this stage, reference can be given to observations of Supreme Court in case of *D. N. Venkatarayappa and Others. Vs. State of Karnataka and Others*³. The defendants have to plead specific date as to when their possession culminated into adverse title against plaintiffs. The long standing possession of property itself would not constitute adverse title to plaintiffs, unless adverse possession is pleaded with sufficient clarity as to when it commenced to the knowledge of true owner with animus to enjoy property adverse to title of true owner.

3 (1997) 7 SCC 567.

15. In light of aforesaid exposition of law and observations in earlier paragraphs as to self destructing pleas taken by the defendants, plaintiffs suit cannot be treated as barred by limitation.

16. The last question raised by Mr Joshi is regarding bar contemplated under section 36A of Consolidation Act. It is true that defendants are shown as owner of entire block no.587 including 5 Acres of suit land. However, scheme of Consolidation Act gives limited authority to Settlement Officer to consolidate agriculture holdings for purpose of better cultivation as per standard of area and treatment of fragments. The chapter VIII of the Act deals with preparation of scheme and compensation. Section 19 deals with publication of draft scheme. Section 21 speaks of implementation of the scheme formed under Section 20 and schemes comes into force once a person entitle for possession of holding under Act is put into possession of holding over respective area allotted to him. The scheme nowhere speaks about authority of Consolidation Officer to deal with dispute as regards to title of consolidated holdings. It does not contemplate Consolidation Officer to decide over title of land. It is only on summary inquiry and material available before him, he is expected to record entries as to holdings of all fragments. Apart from that, decree passed by Civil Court as to title would bind Consolidation Officer to rectify his record, 'of course' without changing scheme for which independent process is prescribed under Section 36B of Act. It

is, therefore, eminent that ownership issue can only be decided by Civil Court. Any illegal or ultra-vires act of Consolidation Officer during implementation of scheme would not defeat title of rightful owner and Section 36A would not create impediment in jurisdiction of Civil Court to grant declaration of ownership in his favour.

17. In the present case, suit is instituted for declaration of ownership and possession assuming that defendants were put into possession during implementation of the scheme, it would not affect title of true owner unless title is transferred to facilitate implementation of scheme with notice to owner payment of compensation and transfer of fragment by following due process of law. In the present case, it is not a case of defendants that they acquired ownership and transfer of title by following aforesaid procedure. On other hand, record indicates that somehow name of defendant's predecessor was mutated in record of rights prior to implementation of consolidation scheme and same was carried forward by Consolidation Officer without venturing into inquiry as to title and holdings. Such an act of Consolidation Officer would never confer title on defendants for excess area shown in their possession in consolidation record.

18. In light of aforesaid observations, no substantial question of law arises for consideration in this Second Appeal. Hence, second appeal stands **dismissed**. No costs.

19. In view of dismissal of Second Appeal, pending Interim Application and Civil Application are also disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

aaa/-