

VRJ

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

SECOND APPEAL NO.309 OF 2021
WITH
CIVIL APPLICATION NO.1609 OF 2017
WITH
INTERIM APPLICATION NO.2154 OF 2019
IN
SECOND APPEAL NO.309 OF 2021

VAIBHAV
RAMESH
JADHAV
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VAIBHAV RAMESH
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Date: 2025.10.07
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- 1 Sushma Anant Munagekar
Age : about 66 yrs, Occu : Household
- 2 Anita Appa Alave
Age : about 45 yrs, Occu : Household
- 3 Sneha Ulhas Haldankar,
Age : about 38 yrs, Occu : Household
- 4 Tanuja Anant Munagekar
Age : about 38 yrs, Occu : Household
- 5 Shashikant Anant Mungekar,
Age : about 51 yrs, Occu : Service
- 6 Chetan Anant Mungekar,
Age : about 49 yrs, Occu. Auto Rickshaw

All R/o : Malvan Bharad (Wayari Road),
Tal : Malvan, Dist : Sindhudurg

... Appellants

V/s.

- 1 Anand Dattatray Nandoskar,
Age : about 51yrs, Occu. Nil
R/o. Malvan, Wayariwada, Tal. Malvan,

District Sindhudurg.

2 Shriram @ Shivaram Govind Nandoskar
(Deceased Through Legal heirs)

2(A) Satish Shriram @ Shivaram Govind
Nandoskar, Age : about 41 yrs, Occu :
Meson

2(B) Vijay Shriram @ Shivaram Govind
Nandoskar, Age : about 38 yrs, Occu :
Meson

2(C) Mangala Digambar Kavatkar
Age : about 35 yrs, Occu : Household
R/o : At & Post : Hadi, Tal. Malvan,
Dist. : Sindhudurg

3 Satish Shivaram Nandoskar,
Age : about 48 yrs, Occu. Service

4 Vijay Shivaram Nandoskar,
Age : about 43 yrs, Occu. : Manual Work

Nos. 3 & 4 R/o : Malvan Wayariwada,
Tal : Malvan, Dist : Sindhudurg

... Respondents

Mr. Abhay S. Khandeparkar, Senior Advocate with Mr.
Rushikesh Bhagat, Rohit P. Mahadik i/by Khandeparkar
& Associates for the appellants.

Mr. Shashank C. Mangale for the respondents (through
V.C.).

CORAM : S. G. CHAPALGAONKAR, J.

DATED : OCTOBER 3, 2025

JUDGMENT:

1. The appellants – original plaintiffs impugn the judgment and decree dated 24th June 2015, passed by District Judge, Sindhudurg, in Regular Civil Appeal No. 39 of 2010, thereby upholding judgment and decree dated 11th February 2010, passed by Civil Judge, Junior Division, Malvan, in Regular Civil Suit No. 29 of 2002, thereby dismissing the plaintiffs' suit.
2. Hereinafter, parties are referred to as the original parties in suit for the sake of brevity and convenience.
3. The appellants – plaintiffs instituted Regular Civil Suit No. 29 of 2002, seeking relief of declaration and perpetual injunction against defendants in respect of agricultural land bearing Survey No. 599, Hissa No. 11, admeasuring 21½ gunthas, situated at Village Vayari, contending that the suit land is ancestral permanent tenancy land of plaintiffs and defendant Nos. 5 and 6. They have been cultivating suit land since the time of their ancestors. One Yesu Ragho Zad was originally put into possession of suit land vide Lavanchitthi dated 10th July 1859. Thereafter, the property continued in possession of Laxman Ganoji Amberkar. After demise

of Laxman, tenancy rights devolved upon his son, Babaji Laxman Amberkar; and after death of Babaji, his son, Bhagvan Babaji Amberkar, acquired tenancy rights in the property. After death of Bhagvan, property came into the possession of Gangabai.

4. On Tillers' Day, i.e., 1st April 1957, Gangabai became a deemed purchaser of suit land under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the 'BTAL Act'). According to the plaintiffs, Gangabai died in 1976, and thereafter her son, Anant Sadashiv Munagekar, continued in possession until his death in 1979. Since then, his wife, Plaintiff No.1, and his children, Plaintiff Nos. 2 to 4, along with Defendant Nos. 5 and 6, are cultivating the suit land as owners.

5. According to plaintiffs, while plaintiffs' predecessor Bhagvan Babaji Amberkar was in possession of suit property, adjacent owners, Sundarabai and Vitthal, erected fencing by making an encroachment over part of suit land. Therefore, Bhagvan had instituted Regular Civil Suit No. 399 of 1939 for removal of the encroachment, which was decreed on 30th July 1941.

6. According to plaintiffs, when they obtained the 7/12 extract of suit land in 2001, they found that Hissa No. 11 from the original

Survey No. 560 had been divided into three parts, i.e., 11-A, 11-B, and 11-C, and also realized that defendant No. 2 had purchased 5.4 gunthas of land and Defendant No. 1 had purchased 10.8 gunthas of land under tenancy proceedings. The plaintiffs and their predecessors were not given notice of any such proceedings. Defendant Nos. 2 to 4 erected fencing on the eastern side of land. The plaintiffs objected, but no heed was paid by defendants. Hence, present suit is instituted.

7. The defendants refuted plaintiffs' claim. According to defendants, in a proceeding taken up by Agricultural Land Tribunal, Malvan, under Section 32G of BTAL Act, they acquired ownership of Pot Hissa. They denied plaintiffs' contention regarding permanent tenancy of Laxman Ganoji Amberkar. According to them, suit land was sold to defendants as early as 1968. Since then, they are in ownership and possession of land.

8. The Trial Court framed issues at Exhibit – 123, recorded evidence, and after hearing all concerned, dismissed the suit with finding that plaintiffs and defendant Nos. 5 and 6 failed to prove ownership and possession over suit property.

9. Aggrieved thereby, plaintiffs filed Regular Civil Appeal No.39

of 2010 before District Judge, Sindhudurg, who concurred with the Trial Court and dismissed appeal.

10. Mr. Khandeparkar, learned Senior Advocate appearing for appellants, would submit that assuming defendants have acquired ownership under the orders of Tribunal, it is restricted to 16 gunthas land only. They are unconcerned with rest of the land out of Hissa No. 11 of Survey No. 559. He would urge that defendants could not bring on record documents as regards tenancy proceedings under which they allegedly acquired ownership. He would therefore urge courts could not have dismissed suit of the plaintiffs over balance of land. He would further urge that if issue as to tenancy was raised by parties, a reference under Section 85A of BTAL Act ought to have been made by framing necessary issue.

11. Having considered the submissions advanced, it can be observed that both courts have concurrently held that plaintiffs could not prove ownership and possession over suit property. The Trial Court observed that defendants are claiming their rights on the basis of decisions in Tenancy Case Nos. IP/Wayari-61 and IP/Wayari-63, wherein the rights of defendants were approved and certificates under Section 32M were issued to them. The

conferment of certificates on defendants under Section 32M was not ultra vires or vitiated by legal fiction. The plaintiffs never challenged validity of decisions of competent tenancy authorities, rendered in year 1968. The Civil Court cannot examine legality of a decisions rendered by the competent authority under Tenancy Act. The Trial Court further observed that merely on basis of a decree passed in Regular Civil Suit No. 399 of 1939, it can not be said that plaintiff in that suit was ancestor of present plaintiffs. Similarly, defendants were not parties to that suit. The revenue entries in 7/12 extract indicate exclusive possession of defendant Nos. 1 to 4 over suit land. Similarly, based on Grampanchayat Tax Assessment Register regarding House No. 560, no presumption can be drawn that plaintiffs are owners of suit land.

12. The Appellate Court also concurred with aforesaid finding.

13. In light of concurrent findings of fact, it can be observed that when plaintiffs instituted suit seeking relief of declaration and perpetual injunction, it was their burden to prove title and possession over suit property. The claim of plaintiffs is based on decree in Regular Civil Suit No. 399 of 1939, passed in favour of Bhagvan Babaji Amberkar. However, decree passed in year 1941,

was only respect of encroachment of defendants therein on Hissa No. 11 from the northern part of land. No inference as to plaintiffs' right, particularly tenancy right can be drawn. The present defendants, or their predecessors, were not parties to that suit, and even no presumption can be drawn on the basis of such decree that on Tillers' Day, i.e., 1st April 1957, Laxman Ganoji Amberkar or the predecessors of the plaintiffs were declared as tenants or deemed owners of suit land. The plaintiffs could not bring on record documentary evidence depicting their possession over suit property. Apart from this, since 1968 onward, defendants are seen in possession of the suit property. They holds certificates of ownership in pursuance of proceedings under Section 32G of BTAL Act.

14. In this background, findings of fact recorded by Trial Court and affirmed by the Appellate Court need not be interfered with. No substantial question of law arises for consideration in this second appeal. In result, second appeal stands dismissed.

15. All pending interlocutory applications stand disposed of.

(S. G. CHAPALGAONKAR, J.)