

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
SECOND APPEAL NO.94 OF 2020
WITH
CIVIL APPLICATION NO.65 OF 2020**

SHRI BAPU BABU RAMOSHI AND ANR.
VERSUS
SHRI VAIBHAV SHAHAJI PATIL AND ANR.

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Mr. A. M. Kulkarni, Advocate for Appellants.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 11th SEPTEMBER, 2025.**

FINAL ORDER:-

1. The appellants/original plaintiffs impugn judgment and decree dated 28.08.2018 passed by learned District Judge, Sangli in Regular Civil Appeal No.63/2009, thereby upholding judgment and decree dated 11.12.2008 passed by learned Civil Judge Junior Division, Sangli in Regular Civil Suit No.52/2004.

2. The appellants/original plaintiffs instituted Regular Civil Suit No.52/2004 seeking relief of perpetual injunction in respect of suit property. It is contention of plaintiffs that their grandfather was original owner of land Gut No.1025 admeasuring 6H 73R situated at Village Rajapur, Taluka Tasgaon, District Sangli. He sold 1/4th share of land under registered sale deed of year 1963 in favour of Shamrao Kolekar. Thereafter, plaintiffs sold 81R land to Ramchandra Ghalage and sold some land to defendant no.1. According to plaintiffs, on 06.01.2004 defendants purchased land from Kolekar. Neither Kolekar

was in possession of land in pursuance to sale deed of year 1963 nor he could have transferred possession to defendants. According to plaintiffs, defendants are obstructing their possession over suit property. Hence, sought for decree of perpetual injunction. The defendants filed written statement asserting their possession over suit property on basis of sale deeds. The Trial Court framed issues based on pleading of parties and recorded findings that plaintiffs could not prove ownership and possession over suit property. Eventually, dismissed suit.

3. In Appeal filed by plaintiffs, learned District Judge confirmed decree as passed by Trial Court.

4. Mr. Kulkarni, learned Advocate appearing for appellants vehemently submits that plaintiffs have brought sufficient evidence to prove their possession over suit property. The evidence of witness-Sadashiv Mohite throws light on aforesaid facts. Undisputedly, land Gut No.1025 is ancestral property. The sale deed executed by grandfather of plaintiffs was money lending transaction and no possession was passed on to Mr. Kolekar. The defendants cannot take advantage of mutation entries and claim their possession over specific portion of land from Gut No.1025. By inviting attention of this Court to cross-examination of defendant no.2, learned Advocate appearing for appellants endeavours to impress upon this Court that sale deed of year 1963 was in respect of undivided portion of land in favour of Mr.

Kolekar. Similarly, attention is invited to cross-examination of defendants' witness-Shamrao Kolekar, particularly admission that his sale deed is for 1/4th share without specification of boundaries.

5. The Trial Court after evaluation of evidence found that there is no substance in contentions of plaintiffs that sale deed executed in favour of Shamrao Kolekar was money lending transaction, particularly in view of fact that, since 1963, sale deed is in existence and same was never objected till date of filing of suit in year 2004. The Trial Court observed that grandfather or father of plaintiffs did not object sale deed during their lifetime. The Trial Court further observed that plaintiffs have sold out part of land Gut No.1025 to defendants under registered sale deed dated 06.08.1991, wherein four boundaries of land under sale is mentioned. It is matter of record that latter on defendants have purchased 1/4th share that was sold by grandfather of defendants to Shamrao Kolekar.

6. The Trial Court observed that plaintiffs could not bring any evidence in support of their contentions that land under sale deed of year 1963 executed by their grandfather was continued in possession of plaintiffs or its possession never passed on to defendants under registered sale deed dated 06.01.2004 executed by Shamrao Kolekar. Both Courts below have concurrently observed that plaintiffs failed to prove their exclusive possession over suit land. In these circumstances, merely on basis of pleading in plaint and contentions, plaintiffs' case

cannot be approved, particularly ignoring contents of registered sale deed dated 06.01.2004. Pertinently, plaintiffs have not sought declaration against sale deed of defendant nos.1 and 2. The suit is filed simplicitor for relief of perpetual injunction without claiming necessary declaration against sale deeds, which bestowed title and possession in favour of defendants in respect of suit property.

7. In view of concurrent finding of facts recorded by Courts below on appreciation of evidence, no substantial question of law arises for consideration in this Second Appeal. In result, Second Appeal sans merit. Hence, stands dismissed.

8. In view of dismissal of Second Appeal, pending Civil Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2025