



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.53 OF 2024

APPELLANTS

Ori. Plaintiffs
on R.A.

- :-** 1. Jitendra Manikrao Kandalkar,
aged 61 years, Occ. Agriculturist,
2. Sudhir Rajeramji Kandalkar,
aged 57 years, Occ. Agriculturist,
- Both R/o Yawali Shahid,
Tq. & Dist. Amravati

..VERSUS..

RESPONDENTS

Ori. Defendants
On R.A.

- :-** 1. Devanand Gunwant Waghmare,
aged 55 years, Occ. Labour,
2. Bhiwakhu Viratna Thero,
aged 57 years, Occ. Labour,
3. Anil Marotrao Shende,
aged 53 years, Occ. Agriculturist,
4. Bhaskar Bansiji Damle,
aged 63 years, Occ. Agriculturist,
All R/o Yawali Shahid,
Tq. & Dist. Amravati

Mr. C. A. Babrekar, Advocate for Appellants
Mr P. S. Thakur, Advocate for the Respondents.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **13.10.2025**

JUDGMENT :

- 1) Heard the learned Advocate for the parties.

2) Notice in the present appeal was issued vide order 07.03.2024 on the following substantial question of law:-

i) Whether the owner of the property can be divested of his ownership right on the basis of the entries in 7/12 extract of reservation of a land for any particular purpose without the appropriate order by the revenue authority?

ii) Whether the courts below have failed to discard the evidence adduced by the plaintiffs as well as by the defendant No.4, without rebuttal evidence by the main contesting defendant Nos. 1 to 3 and as such, committed perversity?

3) The present appellants are the original plaintiffs who had purchased land admeasuring 1.13 H.R., situated at Village Narsingpur, Pragane Karajgaon, Tah. & Dist. Amravati vide sale deed dated 11.05.1987.

4) The suit property is a portion of the said land admeasuring 0.20 H.R. The respondent Nos.1 to 3, who are original defendant Nos.1 to 3, were allegedly disturbing possession of the plaintiffs over the suit property, contending that the said land was earmarked for cremation ground for people belonging to the Bauddha Community. The plaintiffs, therefore filed a suit for declaration of ownership and injunction restraining

the defendant Nos.1 to 3 from disturbing their possession over the suit property.

5) The learned Trial Court dismissed the suit on the finding that entries in the revenue record prior to the date of sale deed indicated that the suit property was earmarked for the purpose as aforesaid.

6) The learned Trial Court has specifically referred to the mutation entry No.23 (Exh. 43) recording that the suit property was reserved for the aforesaid purpose. In view of the aforesaid, the suit came to be dismissed.

7) Aggrieved by the judgment and decree dismissing their suit, the plaintiffs filed Regular Civil Appeal No. 7 of 2020, which also met the same fate. The learned First Appellate Court has also reappreciated the evidence and after referring to the relevant mutation entries and 7/12 extracts, it is held that the suit property was earmarked for the aforesaid purpose and therefore, the declaration and injunction as prayed by the plaintiffs could not be granted.

8) The plaintiffs have filed the present Second Appeal challenging the aforesaid concurrent decrees passed against them. Perusal of the findings recorded by both the learned Courts will

demonstrate that the oral and documentary evidence, particularly the revenue record, is properly appreciated. It is also found that appeal under the Maharashtra Land Revenue Code, 1966, preferred by the plaintiffs challenging the relevant mutation entry is also dismissed by the Sub-Divisional Officer. The entry with respect to the cremation ground is a longstanding entry, which is existing in the revenue record prior to the date of the sale deed in favour of the plaintiffs. Longstanding entries in the revenue record have a presumption of correctness. The plaintiffs have failed to dislodge the presumption. The evidence in the form of revenue record is filed by the plaintiffs and the same is correctly appreciated by the learned Courts. Therefore, the findings cannot be disturbed merely because the defendant Nos.1 to 3 did not enter the witness box. The view taken by both the learned Courts below is a possible view based on the appreciation of evidence.

9) In view of the above, the substantial questions of law framed vide order dated 07.03.2024 are answered in favour of the defendants and against the plaintiffs. Hence, the Second Appeal stands dismissed, with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..