



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

SECOND APPEAL NO.74 OF 2022

APPELLANTS

Ori. Plaintiffs

- :-** 1. Ku. Rashmi Haribhau Sadawarti,
Aged about 43 years, Occ. Household
2. Ku. Reema Haribhau Sadawarti,
Aged about 41 years, Occ. Household,
3. Ku. Nilima Haribhau Sadawarti, Aged
about 39 years, Occ. Agriculturist,
4. Dr. Jayant Haribhau Sadawarti, Aged
about 40 years, Occ. Service, Appellant
No.4 for himself and holding Power of
Attorney for Appellant No. 1 to 3
All R/o. 1093/1, Ashirwad Nagar,
Nagpur, Tah. And Dist. Nagpur

..VERSUS..

RESPONDENT

Ori. Defendant

- :-** Hemendra Gajananrao Bull,
Aged about 40 years, Occ: Service,
Through his Special Power of Attorney,
Gajanan Gulabrao Bull,
R/o. Navjeevan Housing Society,
Tapowan Road, Amravati, Tq. And
Dist. Amravati

Dr. Renuka S. Sirpurkar, Advocate for Appellants.

Mr. A. M. Sudame, Advocate a/w. Mr. I. A. Fidvi, Advocate for the Respondent.

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

DATE : **24/09/2025**

JUDGMENT :

1) The present appellants are the original plaintiffs who, along with their mother (deceased plaintiff No.1), had filed a suit for declaration and possession with respect to the suit property, which is a house property admeasuring about 2200 Sq. Ft., with construction of around 1500 Sq. Ft., bearing House No. 2, Survey No. 15/2 and 15/3, Navjeevan Colony, Tapowan Road, Camp Amravati. The plaintiffs are wife, daughters and son of deceased Haribhau Maluji Sadawarti, who expired on 11.04.2003.

2) The suit property is a part of a layout of a Co-operative Housing Society named Navjeevan Gruha Nirmaan Sanstha, Amravati. Deceased Haribhau was a member of the said society and the suit plot was allotted to him by the said society being a member thereof.

3) The case of the plaintiffs is that a part of the suit property was occupied by one Gargale. The plaintiffs contend that deceased Haribhau had an apprehension that the said Gargale will usurp the entire house property and, therefore,

in order to protect the property, said Haribhau had given authority to the father of the defendant to manage and look-after the suit property. It is stated that, in order to protect the suit property deceased Haribhau executed nominal agreement dated 12.05.1998 in favour of the defendant without taking any consideration. The plaintiffs further alleged that on the request of the defendant, he was placed in possession of the suit property as a gratuitous licensee on 08.11.1998. The plaintiffs have also alleged that the defendant has fabricated the resignation letter dated 12.05.1998 in order to make a show that deceased Haribhau had tendered resignation from membership of the society. It is also alleged that the defendant fabricated possession receipt dated 10.01.1999 and such other documents. In such circumstances, the plaintiffs filed the aforesaid suit for seeking declaration of ownership and possession.

4) It is the case of the defendant that he has entered into an agreement of sale with respect to the suit property with deceased Haribhau on 12.05.1998 for a valuable consideration of Rs. 9,10,000/-. The defendant further claims

that on entering into the agreement of sale with him, deceased Haribhau had tendered resignation as a member of the Co-operative Housing Society on 12.05.1998, which was accepted by the said society by passing a resolution dated 20.05.1998. He further claims that the society had, thereafter, allotted the plot to him vide allotment letter dated 12.06.1998. He also contends that deceased Haribhau had also placed him in possession of the suit property and on receiving the entire sale consideration, he had executed unregistered sale deed with respect to the building structure of the suit property in his favour on 25.10.2001. The defendant accordingly claims to be in possession of the suit property. It will be pertinent to mention that after filing of the suit, the society has executed a registered Deed of Conveyance dated 26.11.2010 in favour of the defendant with respect to the suit plot.

5) Based on the rival pleadings, the learned Trial Court framed issues in the matter on the basis of which both sides led their evidence. The plaintiffs examined Plaintiff No.5 (son of deceased Haribhau) as their witness. From the

side of defendant, the defendant entered the witness box and also examined Mr. Shri Narayan Laddha, President of Navjeevan Co-operative Housing Society and one Mr. Sanjay Deshpande, an engineer.

6) It will be pertinent to mention here that undisputedly, deceased Haribhau and the defendant have filed a suit against the said Shri. Gargale, being Regular Civil Suit No.262 of 1999, wherein a specific averment is made with respect to the agreement executed by deceased Haribhau in favour of defendant.

7) The learned Trial Court has dismissed the suit, accepting the documentary evidence produced on record by the defendant with respect to the agreement between him and deceased Haribhau, documents relating to payment of consideration, delivery of possession and allotment of the suit plot to the defendant by the society on resignation being submitted by deceased Haribhau and also in view of the fact that deceased Haribhau and defendant had filed suit against Mr. Gargale in which a specific statement was made with respect to agreement of sale dated 12.05.1998. The learned

Trial Court has held that the defendant had proved payment of consideration to deceased Haribhau and also that he was placed in possession of the suit property pursuant to the agreement. The learned Trial Court has extensively dealt with the depositions of the plaintiff, defendant and president of the society.

8) Being aggrieved by the aforesaid judgment and decree, the plaintiffs preferred an appeal, being Regular Civil Appeal No.31 of 2013. The learned First Appellate Court has re-appreciated the evidence and has also taken into consideration findings recorded by the learned Trial Court. On re-appreciation of evidence, the learned First Appellate Court has concurred with the reasons and findings recorded by learned Trial Court and accordingly the appeal is dismissed.

9) It will be pertinent to mention here that the plaintiffs/appellants had filed an application under Order 41, Rule 27 of the Code of Civil Procedure, 1908, before the learned First Appellate Court, *inter alia* seeking permission to lead additional evidence with respect to the registered Deed

of Conveyance dated 26.11.2010 executed by the Society in favour of the defendant. The contention of the plaintiffs was that it was necessary to challenge the said Deed of Conveyance for just, proper and complete adjudication of the matter. It was alleged that the said document was deliberately suppressed by the defendant and the society from the plaintiffs/appellants.

10) The learned First Appellate Court has rejected the said application while deciding the appeal on merits. The learned First Appellate Court has found that the evidence on record was sufficient to decide the appeal on merits and, therefore, the application could not be entertained and was liable to be rejected. It is also observed that the defendant had proved the transaction, on the basis of which he had taken possession of the suit property along with other documents relating to payment of consideration, allotment of plot by the Society etc.

11) The learned Advocate for the appellant has argued that the defendant had deliberately suppressed the registered Deed of Conveyance dated 26.11.2010. She

contends that there is an inherent contradiction in the case of the defendant, inasmuch as at one place it is contended that the suit house was purchased by the defendant from Haribhau on 25.10.2001, and yet, registered Deed of Conveyance with respect to the said property was obtained from the society on 26.11.2010. According to her, the said fact gives credence to the case of fraud setup by the plaintiffs.

12) Learned Advocate, Mr. A. M. Sudame, however, counters this by stating that the by-laws of the society will demonstrate that the ownership of the land was retained by the society and merely allotment of plots was made in favour of the members. He contends that the sale deed dated 25.10.2001 pertains to the structure only. He further contends that for entering name in the property card maintained by the City Survey Department, a registered document was required and therefore, a registered Conveyance Deed was executed by the Society in favour of the defendant. He contends that the plaintiffs have not even challenged the allotment of the suit plot by the society in favour of the defendant. He contends that this suit itself is

not maintainable in the absence of challenge to the allotment. He further contends that the registered Deed of Conveyance is only a sequel to the allotment of plot in favour of the defendant. He, therefore, contends that the application for permission to lead additional evidence was rightly rejected.

13) As regards the merits of the matter, Mr. Sudame contends that all the findings recorded by the learned Courts concurrently are pure findings of facts. He argues that the learned Courts have taken into consideration the entire documentary evidence and has appreciated the same in the backdrop of oral evidence led by the parties. He states that the entire transaction in favour of the defendant finds corroboration in the pleadings of late Haribhau in the suit filed against Mr. Gargale. He states that there is one voluminous documentary evidence to establish the case of the defendant, which is rightly considered by the learned Courts. He, therefore, contends that the Second Appeal does not dispose any substantial question of law and is liable to be dismissed as such.

14) It is the case of the plaintiffs that late Haribhau had executed an agreement dated 12.05.1998 in favour of the defendant. They, however, contend that the agreement was a nominal agreement executed only in order to enable the father of the defendant to manage the property effectively and to protect it from Mr. Gargale. The agreement needs to be appreciated in the light of pleadings of Haribhau in the suit filed by him jointly with the defendant. The pleadings in the said suit are sufficient to negate the contention of the plaintiffs that the agreement was a nominal agreement. Apart from this, there is other documentary evidence in the form of the possession receipt, money receipts, resignation letter and also the deposition of president of the society, which are properly considered by both the learned Courts. The president of the society had supported the case of defendant and has deposed that the agreement in question was executed in his presence. The President has also supported the case of the defendant with respect to resignation of Haribhau, which was accepted by the society and re-allotment of the suit plot to the defendant. The said witness

proved the allotment letter and share certificate issued in favour of the defendant.

15) The findings which are recorded after elaborate consideration of the evidence cannot be said to be perverse. Likewise, the learned Advocate for the appellant could not point out that any material evidence has skipped the attention of the learned Courts.

16) In that view of the matter, in the considered opinion of this Court, it will not be possible to re-appreciate the evidence, having regard to the scope of appeal under Section 100 of the Code of Civil Procedure, 1908.

17) As regards the application for permission to lead additional evidence, this Court find itself in agreement with the learned Advocate for the defendant. The document of Deed of Conveyance dated 26.11.2010, executed by the society in favour of the defendant, is only a consequential act which is done in furtherance of the agreement of sale between Haribhau and the defendant and also the letter of allotment issued by the society in favour of the defendant after accepting resignation of Haribhau.

18) As rightly pointed out by the learned Advocate for the defendant, the acceptance of resignation of Haribhau by the society and letter of allotment in favour of the defendant have not been challenged. It is therefore obvious that the plaintiffs also do not have the right to challenge the registered Deed of Conveyance executed in favour of the defendant. The explanation offered by the defendant that the Deed of Conveyance was needed for entering the name in the property card maintained by the City Survey Department is also a plausible explanation.

19) In view of the above, no substantial question of law arises for consideration in the present Second Appeal, therefore the Second Appeal stands **dismissed**.

20) No order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay...