



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

Second Appeal No. 313 of 2006

Abdul Sattar Sk. Madar (Dead),
through LR's'

1. Rahmatbi wd/o Abdul Sattar,
Aged 65 years, Household worker,
2. Abdul Khalil Abdul Sattar,
Aged 45 years, Agriculturist,
3. Abdul Shakil Abdul Sattar,
Aged 33 years, Agriculturist,
4. Abdul Shafee Abdul Sattar,
Aged 29 years, Agriculturist,
5. Md. Salim Abdul Sattar,
Aged 25 years, Agriculturist,
6. Ashabi w/o Abdul Rafique,
Aged 36 years, Household worker,
7. Raziya w/o Chiragoddin,
Aged 34 years, Household worker,
8. Safiya w/o Nasir Khan Pathan,
Aged 20 years, Household worker,

No. 1 to 5 R/o Nanded Bk.
Tq. Daryapur, Distt. Amravati.

No. 6 R/o Sasan (Rampur),
Tq. Daryapur, Distt. Amravati.

No. 7 R/o Sasan (Rampur),
Tq. Daryapur, Distt. Amravati.

No. 8 R/o Borgaon Ningot, P.
Bembda, Tq. Karanja, Distt. Washim.

... Appellants

- Versus -

1. Mohommad Ayub S/o Abdul Razzak,
Aged 62 years, Occ. : Business,
2. Mohommad Kayum S/o Mohd. Ayub,
Aged 40 years, Occu. : Business,

Both R/o Nanded, Tq. Daryapur,
Distt. Amravati.

... Respondents

Mr. M. R. Joharapurkar, Advocate for the appellants
Mrs. Anjali Joshi, Advocate for the respondents

CORAM : ANIL L. PANSARE, J.**DATED : 06-01-2025****ORAL JUDGMENT**

Heard.

2. The appeal has been admitted on following substantial question of law.

Whether, both the Courts below erred in law in holding that the appellants/plaintiffs had failed to prove the sale-deed dated 24-5-1991 in favour of the original plaintiff by Ashok ?

3. It appears that both the Courts below were of the view that sale deed could be proved only by examining attesting witness. This finding runs contrary to well settled principles of law. The Hon'ble Supreme Court in the case of *Bayanabai Kaware Vs. Rajendra S/o*

Baburao Dhote [(2018) 1 SCC 585], by referring to Section 68 of the Evidence Act, 1872, has held that sale deed does not require any attesting witness like gift deed.

4. In the present case, the appellant – plaintiff has examined himself. He stated that he has purchased suit field from one Ashok Yadav vide registered sale deed dated 24-5-1991 and on the same day, he was put in possession. The sale deed was accordingly marked Exhibit 66.

5. The first appellate Court, however, held that though plaintiff has proved the execution of sale deed but the contents ought to have been proved through the attesting witness or scribe of the sale-deed.

6. This finding is contrary to the law laid down by the Hon'ble Supreme Court in the judgment referred to above. That being so, it will have to be held and is accordingly held that the appellant – plaintiff has duly proved the sale deed dated 24-5-1991. Accordingly, the substantial question of law is answered in the affirmative.

7. Resultantly, the appeal is allowed. The judgment and order passed by the first appellate Court viz. Additional District Judge,

Achalpur in Regular Civil Appeal No. 7/2001 dated 19-1-2006 and judgment and decree passed by Joint Civil Judge Junior Division, Daryapur in Regular Civil Suit No. 149/1991 dated 22-12-2000 are quashed and set aside. Suit viz. Regular Civil Suit No. 149/1991 is decreed. The appellant – plaintiff is declared as owner of the suit property being agriculture land Survey No. 140/3, Gat No. 354, admeasuring 0.79 HR situated at Nanded Bk., Tahsil Daryapur, District Amravati with one mango tree with half share in fruits which is more particularly described in the plaint.

8. The respondents-defendants shall handover possession of the suit field to the appellants – plaintiffs within twelve weeks from today.

9. The second appeal is disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)

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