



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

SECOND APPEAL NO.234/2025

Waghu S/o Pochiram Gedam
...Versus...
Mirabai W/o Namdeo Tekam and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.U. Deshmukh, Advocate for appellant

CORAM : ROHIT W. JOSHI, J.
DATE : 12/09/2025

1. The respondent No.1 is the original plaintiff. He had initially filed the suit for possession against the defendant Nos.1 and 2, namely, Pawan Atram and Kamal @ Sulochana Atram. Subsequently, the present appellant was added as defendant No.3 in the said suit. The suit for possession was decreed by the learned trial Court, against which the defendant No.3/present appellant filed first appeal being Regular Civil Appeal No.127/2008. The said appeal came to be dismissed vide judgment and decree dated 30/04/2025. It will be pertinent to state that the original defendant No.2 was not arrayed as respondent in the said appeal.

2. Aggrieved by the concurrent findings made by the learned first appellate Court, the original defendant No.3 has filed the present appeal.

3. Learned Advocate for the appellant contends that the Tenancy Tahsildar by exercising jurisdiction under the provisions of the Hyderabad Tenancy and Agricultural Lands

Act, 1950 (for short hereinafter referred to as “Hyderabad Tenancy Act”) has executed the sale-deed in favour of the appellant/defendant No.3 on 25/08/2004 and in view of the fact that the ownership right is conferred on the appellant under the provisions of the Hyderabad Tenancy Act the decree for possession could not have been passed by the learned civil Court.

4. He contends that the possession of the suit property cannot be ordered to be taken from the defendant No.3 after ownership right under the provisions of the Hyderabad Tenancy Act was vested with him.

5. It is the case of the original plaintiff that she has purchased the suit property from the father of the defendant vide registered sale-deed dated 21/06/1982. The said sale-deed is duly proved. The defendant No.3 claims to be in possession of the suit property from the year 1991. He claims that he was cultivating the land as tenant of the defendant No.1 and accordingly recognizing his tenancy rights, the sale certificate was issued in his favour.

6. It is, thus, clear that the defendant No.1 was not the owner of the property in the year 1990-91 from when the defendant No.3 claims to hold possession of land as a tenant. The defendant No.3 cannot claim to be tenant of defendant No.1 since the year 1990-91 inasmuch as the defendant No.1 was no longer owner of the property in view of sale-deed dated 21/06/1982 executed by his father in favour of the plaintiff. It will be pertinent to state that it is not the case of the defendant No.3 that he was cultivating the land as tenant of the plaintiff. It is also undisputed that the plaintiff who

became owner of the property vide sale-deed dated 21/06/1982 is not a party to the proceedings before the learned Tenancy Tahsildar.

7. Although the disputes inter se between the landlord and tenant of agricultural land cannot be adjudicated by the civil Court, in view of the provisions of the Hyderabad Tenancy Act, the question of ownership between two individuals can always be decided by the civil Court. The adjudication of the civil Court in the present matter is that the plaintiff had become owner of the suit property vide sale-deed dated 21/06/1982 and upon execution of the said sale-deed the father of defendant No.1 had ceased to be the owner of the property. The adjudication of such issue, which is purely civil dispute pertaining to ownership right over immovable property, is obviously within the jurisdiction of the learned civil Court.

8. In view of the aforesaid, the contention in respect of the jurisdiction of civil Court is liable to be rejected.

9. Learned Advocate for the appellant draws attention of this Court to cross-examination of plaintiff's witness No.1 to point out that the defendant No.3 was in possession of the suit property for a period for more than 12 years prior to the date of filing of suit. In view of above, he contends that the suit was barred by limitation. However, in fairness he contends that the plea of adverse possession is not raised in the written statement.

10. Such a plea also could not have been raised since the defendant No.3 claims to be the owner of the suit property and does not recognize the plaintiff as owner.

11. In that view of the matter, the contention in respect of adverse possession and limitation also deserves to be rejected.

12. For the reasons recorded above, no substantial question of law falls for consideration in the appeal. The second appeal is dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar