



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

APPEAL AGAINST ORDER NO.29/2021

APPELLANTS :
(Org. Plaintiffs)

1. Prakash Jamnadas Anandani, Adult,
Occu. Business.
2. Nirmala Harpaldas Anandani, Adult,
Occu. Household.
3. Lajwanti Jamnadas Anandani (Dead)
 - (i) Ishwar Jamndas Anandani, Aged – Adult,
Occu. Business, R/o Behind Birla Gate No.1,
Jathar Peth, Akola, Dist. Akola.
 - (ii) Hemant Harpaldas Anandani,
Aged-Adult, Occu. Business, R/o Birla
Colony, Birla Road, Akola, Dist. Akola.
 - (iii) Rohit Harpaldas Anandani, Aged -
Adult, Occu. Business, R/o Behind Colony,
Birla Road, Akola, Dist. Akola.
 - (iv) Devi Vihalchand Pahalgani, Aged – Adult,
Occu. Household, R/o Varasiya Colony,
Baroda (Gujarat).
 - (v) Hari Sunilkumar Mulchandani, Aged – Adult,
Occu. Household, R/o Bungalow No.45/B,
Collector's Colony, Chembur (Mumbai).
 - (vi) Hiru Indralal Chhabrani, Aged – Adult,
Occu. Household, R/o Vardhaman Nagar,
Nagpur.
4. Wasudeo Jamnadas Anandani, Aged – Adult,
Occu. Business, All R/o Akola, Dist. Akola.

...VERSUS...

RESPONDENTS :
(org. Defendant
No.7)

(Org. Defendant
No.1 to 6)

1. Nilkanthrao Kashirao Deshmukh
Aged 57 years, Occu. Agriculturist,
R/o Pailpada, Tq. & Dist. Akola.
2. State of Maharashtra, through
Collector, Akola.
3. Sub Divisional Officer, Akola.
4. Pavinkumar Pitambar Devare,
Aged – Adult, Occu. Govt. Servant,
R/o Buldana, Dist. Buldana.
5. Ram Krushnarao Joshi, Aged- Adult,
Occu. Govt. Servant, R/o Akola,
Dist. Akola.
4. Pravinkumar Pitambar Devare,
Aged – Adult, Occu. Govt. Servant,
District Caste Certificate Scrutiny
Committee, Pune, Residential School,
Jail Road, Between Yerwada Jail and
Yerwada Mental Hospital, Southern
Side of Commerzone, Yerwada,
Pune – 411006.
5. Ram Krushnarao Joshi,
Aged – Adult, Occu. Additional
Commissioner (City and Service),
Nagpur Municipal Corporation,
Mahanagar Palika Marg, Near Vidhan
Bhavan, Collectors Colony, Civil Lines,
Nagpur, Maharashtra 440001.

(Added correct address for R.4 & 5).

(Amendment carried out as per Court's
order dated 23.03.2023)

6. Suresh Rangrao Bute, Aged about
57 years, Occu. Govt. Servant,
R/o Tahsil Office Akola.

7. ~~Prabhu Onkar Ghatole, Aged about 47 years, Occu. Government Servant, R/o Tahsil Office, Akola.~~

(Deleted as per Court's order dt. 23.3.2023).

Mr. M. G. Bhangde, Sr. Advocate, a/b Mr. R. M. Bhangde, Advocate for appellants
Mr. S. P. Deshpande, Sr. Advocate a/b. Mr. A.R. Deshpande and Mr. Z.Z. Haq, Advocates for respondent No.1
Mr. Mrunal Naik, AGP for respondent No.2 and 3

CORAM : ROHIT W. JOSHI, J.

DATE : 26.09.2025

J U D G M E N T :

1. The present appeal is filed under Order 43 Rule 1 (u) of the Code of Civil Procedure in order to challenge judgment and order dated 26/11/2021 passed by the learned District Judge – 4, Akola in Regular Civil Appeal No.149/2012, by which the learned Court was pleased to quash and set aside judgment and decree dated 01/03/2012, passed by the learned 2nd Joint Civil Judge Senior Division, Akola in Regular Civil Suit No.259/2005 and was pleased to remand the suit for decision afresh.

2. The appellants are the original plaintiffs and respondents are original defendants. The parties will be referred to as 'plaintiffs and defendants' hereinafter. The plaintiffs had filed Regular Civil Suit No.259/2005 *inter alia* claiming that the suit property, which is an

agricultural land bearing Survey No.75 of Akola Tahsil and District Akola was initially owned by one Shriram Khaire and Shrikrushna Khaire and they have purchased the same from the said persons. The plaintiffs claimed that they had made applications for seeking permission for non-agricultural assessment in relation to the suit property and had carved out a layout comprising of several parts over the same. It is the case of the plaintiffs that the defendant No.1, acting in tandem with the Government Authorities created false record that the suit property was acquired under the provisions of Land Acquisition Act, 1894 (for short hereinafter referred to as "LA Act") and was allotted to defendant No.7.

3. It is the case of the plaintiffs that the suit properties were purchased by them from the aforesaid two persons and they had made an application seeking permission for non-agricultural assessment on 17.12.2002. The plaintiffs contend that the application was deemed to be allowed, since decision on the same was not taken within the stipulated period. The application was rejected vide order dated 05.07.2003, although it was deemed to be allowed. It is contended that this application is rejected on the basis of report dated 05.07.2003 furnished by the Tahsildar, wherein it is stated that the land in question was acquired in Land Acquisition Case No.5/47/73-74.

4. The plaintiffs stated that acquisition of land was challenged before this Court vide Writ Petition No.1606 of 1977, which was decided on 07.10.1983. It is contended that award for acquisition of the land was never passed and that, in response to notice dated 17.07.1990 issued by the plaintiffs (Exh. 53), the Rehabilitation Officer, informed vide reply notice dated 22.03.1991 (Exh. 55) that the land was not acquired. It is further alleged that defendant No.7, acting in collusion with other Government officials, has fabricated the record showing that the land was acquired and, thereafter allotted to him.

The plaintiffs sought the following reliefs in the plaint.

1) *It is therefore, most humbly prayed that, it be declared that, the plaintiffs have got deemed permission to convert the land of Field Survey No.75, measuring 7 hec. 04 R. into non-agricultural layouted plots as per application filed by the plaintiffs, dated 17.12.2002.*

2) *Necessary directions may kindly be given to the defendant No.2 for issuing Sanad in respect of Field Survey No.75, measuring 7 hc. And 04 R. of layouted plots for residential layout as per provisions of the Rules framed under Maharashtra Lands Revenue Code for conversion of lands.*

3) *It be declared that, the land of the plaintiffs, bearing Field Survey No.75, as described in paragraph no.1 was never acquired by the State of Maharashtra.*

4) *Necessary directions may kindly be given to the Defendant no.1 for taking action and initiating necessary criminal proceedings for preparing false and fabricated*

documents and for giving incorrect and wrong opinions and reports, against defendants no.3 to 7.”

5. The defendants opposed the suit by filing written statement. Based on rival pleadings, the learned trial Court framed issues in the matter on which both sides led evidence. After recording evidence and hearing the parties, the learned trial Court decreed the suit partly vide judgment and decree dated 01/03/2012. The learned trial Court granted a declaration of ownership over the suit property in favour of the plaintiffs and further declared that permission for non-agricultural assessment under Section 44 of the Maharashtra Land Revenue Code, 1966 (for short hereinafter referred to as “MLR Code”) was deemed to be granted to the plaintiffs. Accordingly, mandatory injunction was also issued to the Government authorities, who were arrayed as defendant Nos.1 and 2, to issue “Sanad” with respect to suit property in favour of the plaintiffs, as per Section 44 (6) of the MLR Code.

6. The defendant No.7 preferred appeal being Regular Civil Appeal No.149/2012 challenging the said decree. The learned first Appellate Court has decided the appeal vide judgment and order dated 26/11/2021. As stated above, the learned first Appellate Court has quashed and set aside the judgment and decree passed by the learned trial Court and has remanded the matter for fresh adjudication. The

learned first Appellate Court has held that issue No.1 framed by the learned trial Court with respect to collusion between defendant Nos.2 to 7 for preparing false record and fabrication of documents should have been decided in the negative since the documents on the basis of which the said finding was arrived at were not proved in accordance with law. It is further observed that after the evidence was closed and the matter was posted for final arguments, permission to file certain documents was granted to the plaintiffs without providing further opportunity to rival parties to lead evidence. It is further held that the learned trial Court has decided the issue of ownership in the absence of pleadings, which was not permissible.

7. Aggrieved by the aforesaid judgment and order, the original plaintiffs have filed the present Appeal against the Order. The following substantial questions of law have been framed in the present appeal vide orders dated 12/11/2024 and 29/01/2025.

Dated : 12/11/2024

I) “Whether the First Appellate Court erred in remanding the matter at the instance of defendant no.7 (here respondent no.10 in teeth of the fact that respondent no.2 and 3 did not challenge the judgment and decree of the Trial Court rather they accepted the judgment and decree of the Trial Court ?”

Dated 29/01/2025

II) Whether the impugned judgment delivered by the learned lower appellate court is vitiated due to non-consideration of documents, viz. Exhibits 53, 54, 55 and 56 ?

III) Whether the learned lower appellate court has erred in law in holding that it was erroneous on part of the learned trial Court to grant declaration of ownership of plaintiffs over the suit property in absence of any prayer to that effect without examining the contents of plaint, reasoning recorded by the learned trial Court and the principle that substance has primacy over the form ?”

SUBSTANTIAL QUESTION OF LAW NO.I

8. The plaintiffs have alleged that although the suit property was not acquired, defendant No.7, acting in collusion with the other respondents, created false records to show that the suit property was acquired under the provisions of Land Acquisition Act and was thereafter allotted to him. Defendant No.7 has contended that the property was allotted to him. The defendant No.7 claims right over the property. Apart from this, there are specific allegations of personal nature against defendant No.7. Defendant No.7 obviously has the right to defend himself as against the allegations levelled against him. The learned Trial Court has recorded adverse findings against the defendant no.7 with respect to the said allegations.

9. In view of the aforesaid, defendant No.7 will have the right to file an appeal in order to challenge the judgment and decree passed by the learned Trial Court. Merely because the State does not file appeal, right of defendant No.7 to file an appeal would not be lost. In this context, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court in the matter of *State of Punjab and others..vs...Dalbir Singh* reported in *1992 (SUPP) 2 SCC 164*, wherein it is held that a person against whom allegations of mala fides are made is a necessary party to a civil suit. It is obvious that such person will also have right to file appeal in case the suit is decided against him. The learned Senior Advocate appearing for the defendant No.7 has rightly placed reliance on the judgment in the matter of *Muddasani Venkata Narsaiah (Dead) through Legal representatives...vs...Muddasani Sarojana*, reported in *(2016) 12 SCC, 288* in support of his contention that appeal at his behest would be maintainable.

SUBSTANTIAL QUESTION OF LAW NO.III :-

10. The learned First Appellate Court has clearly erred in remanding the matter on the ground that the learned Trial Court has granted declaration of ownership in favour of plaintiffs, on the ground that there was no express prayer in this regard in the plaint. The learned First Appellate Court ought to have appreciated that the plaintiffs claimed that they had purchased the suit property by registered Sale

Deeds. The plaint averments clearly reveal that the plaintiffs are claiming ownership rights over the suit property. It is the contention of the plaintiffs that the respondents acting in collusion with each other, had fabricated records to make a show that the suit property was acquired by the Government under the provisions of Land Acquisition Act. The plaintiffs contended that the land was not acquired. In this context when the prayer clauses of the plaint are perused, it is found that the plaintiffs have sought a declaration that the suit property was never acquired by the State of Maharashtra and further the plaintiffs also sought a declaration that application for non-agricultural assessment of the suit property filed by them should be deemed to have been allowed and alongwith such declaration a prayer for mandatory injunction to issue Sanad with respect to the suit property is also sought. All these prayers, read together, clearly indicate that the plaintiffs are claiming ownership over the suit property and further that the they were never divested of their ownership rights, since the land was never acquired. In the considered opinion of this Court, the pleadings and prayers in the plaint clearly indicate that the issue of ownership is implicit in the suit and the entire foundation of the suit is that the plaintiffs are owners of the suit property. The learned Trial Court could not have decided the suit without deciding the issue of ownership. The defendants were fully aware about the case of plaintiffs and there is

absolutely no element of surprise in the adjudication of issue of ownership by the learned Trial Court. The learned First Appellate Court has clearly erred in interpreting the pleadings in the plaint to hold that the suit was required to be remanded for fresh adjudication since decree of declaration of ownership of plaintiffs over the suit property is granted although the plaintiffs did not pray for the same. Accordingly, the substantial question of law No.3 deserves to be answered in favour of the appellants/plaintiffs and against the respondents/defendants.

SUBSTANTIAL QUESTION OF LAW NO.II :-

11. The said question pertains to the merits of the matter. In the event the learned First Appellate Court has finds that the documents at Exh.53 to 56 are not properly proved. This is one of the grounds for remanding the matter. Both the learned Senior Advocates had advanced submissions in this regard. They have also cited various authorities in support of their respective contentions.

12. However, in the opinion of this Court, the question pertaining to the proof of the said documents relates to the merits of the matter. The learned First Appellate Court ought not to have remanded the suit for fresh adjudication on this ground. The learned First Appellate Court should have decided the appeal on merits in the light of the evidence that has come on record. Whether the aforesaid documents are duly proved and can be read in evidence or not as also the

evidentiary value thereof could be decided by the learned First Appellate Court on merits. There is absolutely no need to remand the matter on this ground.

13. It is noticed that both the learned Advocates have cited separate authorities with respect to proof of the said documents, admissibility in evidence, as also the proof of contents thereof. It appears that, these judgments were not brought to the notice of the learned First Appellate Court when the appeal was argued. The learned First Appellate Court shall reconsider the issue as regards admissibility, proof and proof of contents of the documents in question in the light of judgments to be cited during the course of hearing, without being influenced by the observations made in the judgment dated 26.11.2021.

14. In view of the aforesaid, it is held that defendant No.7 in the present appeal has the locus and the right to file appeal challenging the judgment and decree passed by the learned Trial Court.

15. The appeal against order is **allowed** in the following terms:-

A) Judgment and Order dated 26.11.2021 passed by the learned District Judge-4 in Regular Civil Appeal No.149 of 2012 is hereby quashed and set aside.

B) Regular Civil Appeal No.149 of 2012 is remitted to the learned First Appellate Court for adjudication of the same on merits.

- C) The parties shall appear before the learned First Appellate Court on **10.11.2025**. The parties to note that separate notice for appearance will not be issued in the matter.
- D) No order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar/Tanmay