



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

SECOND APPEAL NO. 47 OF 2023

Sahebrao Pandurang Thakare,
Age 82 years, Occ. Agriculturist,
R/o. Rajpur (Akoli), Tq. Sangrampur,
District Buldhana, Mobile No. 9922838863

... **APPELLANT**
(Original Plaintiff)

// VERSUS //

1. Janardhan Pundalik Dambre,
Aged about 75 years, Occ. Agriculturist,
2. Sanjay Janardan Dambre,
Aged 55 years, Occ. Agriculturist
3. Vijay Janardan Dambre,
Age 50 years, Occ. Agriculturist

All R/o. Sawala, Tq. Sangrampur,
District Buldhana.

... **RESPONDENTS**
(Original defendants)

Smt. S. W. Deshpande, Advocate for appellant.
Shri S. S. Shingane, Advocate for respondents.

CORAM :- M. W. CHANDWANI, J.

RESERVED ON :- 08.10.2024
PRONOUNCED ON :- 02.01.2025

JUDGMENT :-

Heard.

2. **Admit.** With consent of the parties, the matter is heard
finally at the admission stage.

3. The judgment and decree dated 07.12.2016 of dismissal of the Regular Civil Suit No. 36/2012 passed by the learned Civil Judge Junior Division, Sangrampur, District Buldhana and confirmed vide judgment and decreed dated 12.08.2022 by the learned District Judge, Khamgaon, District Buldhana in Regular Civil Appeal No.01/2017 have been challenged in this appeal.

4. The appellant filed a suit for injunction against the respondents claiming himself to be in possession of the agricultural land bearing Gat No. 196, Mouza Sawala, Tahsil Sangrampur, District Buldhana admeasuring 1H 20R (for short, "the suit field") on the basis of a partition deed between the appellant and his brother. The plaint depicts that the appellant got the said suit field in partition by way of registered partition deed executed in the year 1958. On 15.04.2012, the respondents obstructed the appellant while ploughing the suit field and therefore, he filed a report with the Police. When that did not work, he filed a suit in the Court of the Civil Judge Junior Division, Sangrampur. By filing written statement, the respondents denied possession of the appellant over the suit field and came up with a case that in the year 1960, the appellant had sold the property to Govind Daulat Koli. After the demise of Govind Koli, his legal heirs Janabai and Muralidhar sold the suit field to one Namdev on 15.05.1970. Thereafter, his daughter Gunfabai Dambre became the owner of the

suit field and is cultivating the same. She has also obtained an electric connection in the suit field for the purpose of irrigation. After the death of Gunfabai Dambre on 01.05.2005, the respondents became owner of the suit field by succession. Just because their names were not mutated in the revenue record, the appellant is taking advantage of it. The Trial Court, by holding that the appellant is not in possession of the suit field, dismissed the suit of the appellant. The appellant made an unsuccessful attempt before the First Appellate Court. The learned District Judge confirmed the judgment and decree of the Trial Court. Feeling aggrieved by the judgment and decree of dismissal of the suit and rejection of the appeal, this second appeal came to be filed by the appellant.

5. By order dated 24.02.2023, the following substantial question of law was framed:-

“Whether both the Courts below have committed perversity in recording that the plaintiff was not in possessions of the suit property and denied decree for grant of permanent injunction ?”

6. Smt. S. W. Deshpande, learned counsel for the appellant submitted that the appellant is the owner of the suit field which he got in partition by way of registered partition deed and since then he is cultivating the suit field. The revenue record such as 7/12 extract, Gav Namuna-8 shows the name of the appellant as the owner of the suit

field. According to her, the so called sale-deed executed by the appellant has not been proved by the respondents which has not been considered by the Trial Court and the Appellate Court. The original sale-deed has not been placed on record and therefore, perverse findings regarding possession and the entries on record are made without placing the original sale-deed on record. The findings recorded by the Courts below regarding possession of the appellant on the suit field are perverse and is required to be set aside.

7. *Per contra*, Shri S. S. Shingane, learned counsel for the respondents supported the judgment of the Trial Court and the First Appellate Court. According to him, it is an open and shut case wherein, inspite of selling the property to one Govind, the appellant is claiming himself to be the owner of the suit field. The respondents are the legal heirs of Gunfabai, the daughter of Namdev, who had purchased the suit field from Govind. The certified copies of the sale-deeds and index have been filed on record, which demonstrate that the appellant is not the owner of the suit field anymore.

8. Perusal of the judgments impugned reveals that the Trial Court as well as the First Appellate Court relied on the factum of sale of the suit field by the appellant on the basis of certified copies of the sale-deed and index to office of the Sub-Registrar and held that the

appellant had sold the suit field and did not give any weightage to the 7/12 extract of the suit field, wherein the name of the appellant appears.

9. It is a settled position of law that the title of a property cannot be decided on the basis of revenue record. However, these documents are material for ascertaining the possession of land having presumptive value unless contrary is proved. A reliance can be placed on the decision in the case of *Namdeo S/o. Pandurang Khedkar Vs. Sahi Gupta Masjid, Chandrapur*¹. Having said so, let's see whether this presumption of possession is rebutted by the respondents.

10. The certified copy of the sale-deed Exh.116 and 112 has been placed on record by the appellant and other entries of index II in respect of those sale-deeds Exh.113, 116 and 117 respectively. The certified copies of the sale-deeds Exh.112 and 116 have been placed on record after obtaining permission to lead secondary evidence from the Trial Court. Therefore, I do not see any illegality in relying on those sale-deeds by the Trial Court as well as the First Appellate Court.

11. Needless to mention that both the sale-deeds are 30 year old documents and therefore, formal proof of these documents is not required. Therefore, non-examination of the executant/witness to the

¹ 2014 (3) ALL MR 592

sale-deeds is not fatal to the case particularly, when the sale-deeds do not require compulsory attestation unlike gift-deed, will- deed and mortgage-deed.

12. The appellant, having sold the suit field, does not remain owner of the suit field. The version of Arjun (PW2), a labourer, who cultivates the agricultural field of the adjacent owner i.e. the owner of a part of Gat No. 196, who purchased the land from the brother of the appellant has affirmed the possession of the respondents over the suit field. Baliram (PW6) also corroborated the version of the respondents regarding their possession over the suit field. Considering the material on record, I do not see any perversity in the findings recorded by the Trial Court as well as the First Appellate Court that the appellant failed to prove his possession over the suit field.

13. Therefore, no interference is required in the concurrent findings of both the Courts below. No substantive question, as framed, arises in the appeal. Consequently, the appeal is dismissed.

(M. W. CHANDWANI, J.)