



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

SECOND APPEAL NO.111 OF 2020

Appellant
(Original Defendant on
R.A)

- : Abdul Gani s/o Majid Sheikh,
Since deceased through his Legal Representatives:-
1. Smt. Jaharun B. wd/o Abdul Gani Sheikh,
Age 59 years, Occ. Housewife,
R/o Dasgaon, Post : Dawniwada,
Tah. and Dist. Gondia.
 2. Smt. Asha w/o Jamil Sheikh,
Age 38 years, Occ. Housewife,
R/o Parva Deshmukh, Tah. Ghatanji, Dist. Yavatmal.
 3. Smt. Sabnam Bano w/o Kadir Sheikh,
Age 36 years, Occ. Household.
 4. Smt. Rubina w/o Ishtk Sheikh,
Age 34 years, Occ. Household.
- Nos.3 and 4 are R/o Dasgaon (Bujrug),
Tah. & Dist. Gondia.
5. Smt. Najina Bano w/o Irfan Shaikh,
Age 30 years, Occ. Household,
R/o Dhamangaon Railway, Laxminagar,
Tah. Dhamangaon Rly., Dist. Amravati.
 6. Smt. Saina Bano w/o Sarifbhai Sheikh,
Age about 28 years, Occ. Household,
R/o Near Kundanlal Urdu School, Kalamna,
Tah. Nagpur, Dist. Nagpur.

– Versus –

Respondents
(Original Plaintiffs on R.A.)

- : 1. Yashwant s/o Harichand Meshram,
Age about 45 years, Occ. Labour.

2. Bhavikdas s/o Harichand Meshram,
Age about 45 years, Occ. Labour.

Both R/o Dasgaon, Post Dawniwada,
Tah. and Dist. Gondia.

Mr. M.R. Joharapurkar, Advocate for the Appellants.
Mr. V.R. Borkar, Advocate for the Respondents.

CORAM : ROHIT W. JOSHI, J.
DATE : 8th SEPTEMBER, 2025.

ORAL JUDGMENT :

01. Heard the learned Advocates for the parties.

02. The present second appeal is filed for challenging the judgment and decree dated 19/12/2015 passed by the learned 3rd Joint Civil Judge, Junior Division, Gondia in R.C.S. No.2/2006 and the judgment and decree dated 28/08/2019 passed by the learned District Judge-2, Gondia dismissing R.C.A. No.1/2016 arising out of the said judgment and decree passed by the learned trial Court.

03. The respondents, who are the plaintiffs, had filed a suit against the appellant, who is the original defendant, seeking decree for perpetual injunction restraining the defendant from disturbing his peaceful possession over Plot No.62 and also for mandatory injunction to remove the material lying at the suit site as also to restrain from carrying out

further construction activities. In the sum and substance, the prayer is for possession.

04. The case of the plaintiffs initially was that their father was allotted Plot No.23 by the Government of Maharashtra on permanent lease with effect from 01/10/1976 for the purpose of construction of residential house. They contend that the said Plot No.23 was subsequently renumbered as Plot No.62. As against this, the case of the defendant is that Plot No.62 was allotted to him.

05. Initially, the suit was dismissed by the learned trial Court vide judgment and decree dated 30/09/2008. However, the plaintiffs preferred an appeal being R.C.A. No.64/2008, which was partly allowed. The decree passed by the learned trial Court was set aside and the suit was remanded for fresh adjudication. It must also be stated that the plaintiffs had amended the plaint to contend that allotment of Plot No.23 in favour of their father was cancelled, since the said plot was situated in a mine and in lieu of the said Plot No.23, suit plot i.e. Plot No.62 was allotted.

06. During the course of evidence, the plaintiffs examined three witnesses including plaintiff No.2 as PW-1 and a witness from the revenue department as PW-3. The relevant documents were proved during the course of evidence of this witness including the documents granting lease

with respect to Plot No.23 (Exh.43) and document granting lease with respect to Plot No.62 (Exh.51). The relevant extract of Form-A Register recording entries of allotment was also proved and marked as Exh.101.

07. The suit was decreed and the appeal preferred by the defendant was also dismissed. The present second appeal is preferred against the said concurrent decrees. Notice was issued in the present second appeal vide order dated 12/10/2023 on the following substantial questions of law. Both the learned Courts below have recorded a categorical finding that Plot No.23 was initially allotted to the father of the plaintiffs vide lease-deed/patta at Exh.43. The learned Courts below have referred to the documents of lease/patta with respect to the suit plot i.e. Plot No.62 (Exh.51) and have recorded that initially Plot No.23 was allotted to the father of the plaintiffs and thereafter Plot No.62 was allotted. While recording such findings, the learned Courts below have referred to several other documents such as Tax Receipt, (Exh.41), Register of Allotment (Exh.101) apart from the documents of lease with respect to both the plots.

08. The contention of the learned Advocate for the appellant is that there is no order by any authority indicating that allotment of Plot No.23 was cancelled and in lieu thereof Plot No.62 i.e. the suit plot, was

allotted to the father of the plaintiffs. It is contended that in the absence of any order of allotment, lease with respect to suit plot could not have been granted to the plaintiffs.

09. The record and proceedings of both the learned Courts below are received. With the able assistance of the learned Advocates for the parties, this Court has perused the judgments delivered by both the learned Courts as also the pleadings of parties and depositions of the witnesses. Likewise, the exhibited documents are also perused by this Court. A perusal of lease/patta of the suit plot, which is at Exh. 51, will demonstrate that land bearing Plot No.23 was initially allotted to the father of the plaintiffs on 13/10/1976. This document also mentions Revenue Case No.5/LNA-22/76-77. There is an endorsement on this document regarding cancellation of Plot No.23 and allotment of Plot No.62 in favour of father of the plaintiffs vide order dated 16/03/1979 passed in Revenue Case No.226/LNA-22/78-79. The veracity of this endorsement was not questioned during the course of evidence.

10. Likewise, there are other documents on record to corroborate allotment of suit Plot No.62 in favour of the father of the plaintiffs, as such Exh.47 and Exh.49, which are the Extract of Register of Lands allotted for construction of residential houses. Remark column thereof records that

Plot No.62 is allotted to the father of the plaintiffs by cancellation of allotment of Plot No.23.

11. In view of above, it cannot be said that the findings recorded by the learned Courts below are not supported by any evidence. The learned Courts have appreciated the documentary evidence on record to arrive at a finding of fact regarding allotment of Plot No.62 in favour of the father of the plaintiffs. This finding of fact cannot be said to be perverse. Interference with finding of fact in exercise of appellate jurisdiction under Section 100 of the Code of Civil Procedure is impermissible.

12. In view of the aforesaid, the substantial questions of law framed vide order dated 12/10/2023 needs to be answered in favour of the plaintiffs/respondents. The second appeal, therefore, stands dismissed with no order as to costs.

(Rohit W. Joshi, J.)

**sandesh*