



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 78 OF 2025

**MOTHYA INDYA BHIL
VERSUS
SHIVNYA KHALYA TADVI AND OTHERS**

...

**WITH
APPEAL FROM ORDER NO. 82 OF 2025**

**JATTYA INDYA BHIL
VERSUS
SHIVNYA KHALYA TADVI AND OTHERS**

...

Advocate for Applicants : Mr. Amit S. Savale
Advocate for Respondent nos. 1,4 and 5 : Mr. Umakant U. Wagh

CORAM : SHAILESH P. BRAHME, J.
REERVED ON : 09.01.2026
PRONOUNCED ON : 19.01.2026

PER COURT :

Heard bot sides finally.

2. Appellants are original plaintiffs who are challenging orders of remand passed by the Lower Appellate Court in distinct appeals, arising out of the decree of injunction passed by the Trial Court.

3. A.O. No. 78/2025 is arising out of Regular Civil Suit No. 17/2010 and Regular Civil Appeal No. 33/2015. A.O. 82/2025 is arising out of Regular Civil Suit No. 16/2010 and Regular Civil Appeal No.35/2015. The defendants in both the proceedings are common. The plaintiffs are real brother. The facts are almost common. The subject matter is the property allotted to the respective plaintiffs. Both Appeal from Order can be decided by common judgment. For sake of convenience this Court is referring paper book of A.O. No. 78/2025.

4. The parties are referred by their original status in the suit.
5. Plaintiff had filed Regular Civil Suit No. 17/2010 in respect of land Gat No. 39/2, 40/2 and 41/2, which is claimed to be ancestral property. His father Indya is stated to be the nephew of Samsibai, who was widow of original owner Bonda. The subject matter is claimed to be inherited by father and it was received by the plaintiff in a partition amongst his brothers. It is contended that suit land is in his possession and cultivation and defendants are obstructing it. The mutation entries No. 16, 79 and 110 disclose the title and possession. The threats given by the defendants for dispossession is the cause for filing suit for injunction.
6. The suit is contested by the defendants contending that there was no relationship between original owner Bonda and plaintiff's father Indya. On the contrary the defendant no. 1 is stated to be son of the brother of Samsibai wd/o Bondya. It is contended that the suit lands are illegally mutated in the name of father of the plaintiff. There is violation of Section 36 of the Maharashtra Land Revenue Code. The mutation entries are stated to have been challenged by the defendants before Collector.
7. The parties led oral and documentary evidence before the Trial Court. Plaintiff examined two witnesses. Defendants examined one witness. After considering the material on record Trial Court decreed the suit on 19.07.2014. Being aggrieved, appeal was filed before the Appellate Court as referred above. By impugned order matter is remanded to the Trial Court for deciding the issues framed in paragraph no. 13 and for that purpose parties are permitted to amend the pleadings and to lead evidence.
8. Learned counsel Mr. Savale appearing for the appellants submits that impugned order is thoroughly unsustainable in law because lower Appellate Court could have decided the matter on its own merits and it had ample power under Order XLI of Civil Procedure Code to decide the matter on merits. It is further submitted that plaintiffs have long standing possession

and mutation entries in their names which would corroborate the title. It is further submitted that there is admission of the defendant witness showing possessing of the plaintiffs which is not properly appreciated. He would further submit that the approach of the lower Appellate Court is discriminatory because in a collateral proceeding of RCS No. 34/2015 the lower Appellate Court under identical facts and circumstances of the case dismissed appeal vide Judgment and decree dated 7.8.2023. It is further submitted that the order of remand is unwarranted and liable to be set aside.

9. Per contra, learned counsel for the respondents supports impugned order. It is vehemently submitted that the suit filed for relief of injunction is defective because title of the plaintiffs is objected by the defendants and no relief of declaration is claimed. It is further submitted that there is absolutely no evidence on record to show the title of the plaintiffs. The revenue record is for the physical purposes. It is submitted that the lower appellate Court has taken a reasonable view and the core issues involved in the matter were not dealt with by the Trial Court. For that purpose remanding the matter would give opportunity to both the parties. It is further contended that four boundaries have not been described in the plaint.

10. It is indicated that appeals would be decided on following substantial questions of law:

(i) Whether the Lower Appellate Court is justified in remanding the matter just to adjudicate the points framed in paragraph no. 13 of the impugned judgment, which exercise could have been undertaken by the Appellate Court itself ?

(ii) Whether the impugned order is sustainable when Lower Appellate Court is having jurisdiction to decide the question of facts of law on the basis of material available

before it ?

11. Accordingly, both counsels made their submissions as stated above.
12. Appellate Court in the impugned judgment recorded that substantial questions of law arose in the matter and those were not dealt with by the Trial Court. In paragraph no. 13 following points are mentioned :

“(1) Whether the title and possession of the agricultural lands would be decided solely on the basis of mutations effected by the revenue authorities ?

(2 Whether father of plaintiff obtained previous sanction of Collector under Section 36 of Maharashtra Land Revenue Code while transferring the suit lands to his name ?”

13. Interestingly, lower appellate court himself proceeded to answer and examine those points for determination in further paragraphs. If that is so, then there was no necessity for remanding the matter to the Trial Court. Both parties had led evidence and it has not been recorded by the Appellate Court that further evidence was required. The issues, which according to Lower Appellate Court are necessary to be determined, could have been dealt with by exercising powers under Order XLI Rule 24 or 33 of C.P.C. The order of remand in such a situation is unwarranted and amounts to patent illegality.

14. It is useful to refer to decision of the Supreme Court laying down parameters of lower Appellate Court especially in case of remand. In matter of **Shivakumar and Ors. Vs. Sharanabasappa and Ors.; (2021) 11 Supreme Court Cases 277**, following are the relevant principles culled down by the Apex Court.

“26.4. A conjoint reading of Rules 23, 23A and 24 of Order XLI brings forth the scope as also contours of the

powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an Appellate Court is to follow the mandate of Rule 24 of Order XLI Code of Civil Procedure and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a re-trial is considered necessary that the Appellate Court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the Trial Court may not be considered proper in a given case because the First Appellate Court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.”

15. The plaintiffs are claiming his title and possession through inheritance. The revenue record indicate their possession. For that purpose mutation entries No. 16, 79 and 110 are pressed into service. The defendants do not claim their possession over the suit land though they are disputing plaintiffs title over the suit land. There is no specific averments in the written statement regarding their possession. The long standing mutation entries have presumptive value. The findings recorded by the Lower Appellate Court regarding title of the plaintiffs is vulnerable.

16. Learned counsel Mr. Savale has relied upon judgment of **M. Kallappa**

Setty Vs. M. V. Laxminarayan Rao; 1972 CJ (SC) 291, Rame Gowda Vs. M. Varadappa Naidu; 2003 CJ (SC) 891, to buttress that long standing possession even that of a trespasser needs to be protected. The settled possession of a person without title would entitle him to protect the possession. Further reliance is placed on the judgment of **Narasamma and Ors. Vs. State of Karnataka and Ors; 2009 AIR SCW 2653**; to show that entries in the revenue record would *prima facie* show the title. A judgment of full bench of Allahabad High Court in the matter of **Yar Muhammad and another Vs. Lakshmi Das and others; AIR 1959 Allahabad 1**, is also cited to support the proposition that possession is *prima facie* evidence of title, and if a person, who is in possession is dispossessed, he has right to claim back possession from the person who dispossessed him. I am of the considered view that the lower Appellate Court has halfheartedly dealt with the matter on merits and simultaneously remanded to the Trial Court which is impermissible. It could have decided the matter on the material which was placed before him.

17. The relationship of the parties *vis a vis* the original owner is disputed. There are rival claims. Plaintiff is contended to be not related to Samsibai. The defendants have inconsistent pleas about their relationship with Samsibai. It would be open for the lower Appellate Court to determine the relationship and the status of the parties. No case is made out to remand the matter to the Trial Court.

18. A reliance is also placed on the judgment of **Jharkhand State Housing Board Vs. Didar Singh and another; (2019) 17 Supreme Court Cases 692**, to counter the submission that no relief of declaration is solicited by the plaintiffs although the title is disputed. In paragraph no. 10 and 11 of the judgment, this aspect is considered by the Apex Court. This Court need not comment upon the issue, which is kept open for determination by the lower Appellate Court.

19. For the reasons stated above, the substantial questions of law framed in the appeals will have to be answered in favour of the appellants. Impugned judgment and order is found to be patently illegal and unwarranted. I, therefore, pass following order :

ORDER

(i) Appeal from Orders Nos. 78/2025 and 82/2025 are allowed. Judgment and Order dated 26.11.2021 passed in Regular Civil Appeal No. 33/2015 and Regular Civil Appeal No. 35/2015 are quashed and set aside.

(ii) The matters are relegated to the lower Appellate Court to decide Regular Civil Appeal Nos. 33/2015 and 35/2015 on their own merits extending opportunity to the parties. Hearing is expedited.

(iii) The parties shall appear before the lower Appellate Court on 02.02.2026.

(iv) There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

mkd/-