



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

SECOND APPEAL NO. 201 OF 2024

(RAJESH S/O SHANKAR NAKTODE

VS

TUKARAM S/O KOTHU HATWAR AND ANOTHER)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. N.B.Kalwaghe and Mr.N.B.Raut, Advocate for appellant.
Mr. Shubham Mokadam, Advocate for respondents.

CORAM : ROHIT W. JOSHI, J.
FEBRUARY 17, 2026

1) The present appellant is plaintiff in R.C.S. No.08/2016 decided by the learned Civil Judge Junior Division, Lakhandur vide judgment and decree dated 19/03/2019. The said suit was filed by the appellant seeking permanent injunction restraining the defendants from disturbing his possession over the land bearing Gat No.295 of village Parsodi/Nag, Tahsil Lakhandur, District Bhandara, admeasuring 0.07 HR. The plaintiff claims that he has purchased the suit property from his father vide sale deed dated 18/06/2014. As against this, the defendants' case is that they have purchased the suit property from the grandfather of the plaintiff vide registered sale deed dated 01/06/1979.

2) The learned trial Court considered the sale deed dated 01/06/1979 and the sale deed dated 18/06/2014 and held that the sale deeds pertain to different portions. Accordingly, the learned trial Court has held that the plaintiff has proved his ownership over the suit property. The learned trial Court held that the plaintiff failed to prove threat to possession and accordingly, dismissed the suit. Being aggrieved by the dismissal

of the suit, the plaintiff preferred an appeal being R.C.A.No.78/2019. The learned first appellate Court has reversed the finding with respect to ownership and has held that plaintiff has proved the ownership as well as possession over the suit property.

3) Mr.Nischay Raut, learned counsel for the appellant vehemently argues that the sale deed dated 01/06/1979 in favour of the defendants does not mention the gat number of the land purchased by defendants from plaintiff's grandfather and therefore, the learned Courts ought not to have dismissed the suit relying on the said sale deed. He contends that there is no material on record to co-relate the land forming subject matter of the aforesaid sale deed dated 01/06/1979 with the suit property. The learned Advocate argues that the learned trial Court had recorded finding that property purchased by the plaintiff and defendants are two different properties and thereby upheld the title of the plaintiff over the property purchased by him. He contends that the learned first appellate Court has erroneously reversed, the said finding.

4) Per contra, Mr.Shubham Mokadam, learned counsel for respondent supports the findings recorded by the learned first appellate Court. He contends that since the grandfather of plaintiff had already sold the suit property to the defendants' father vide sale deed dated 01/06/1979, the subsequent sale deed of the year 2014 executed by plaintiff's father in his favour is a meaningless document.

5) The learned first appellate Court has referred to boundaries of the property purchased by the defendants as mentioned in the sale deed as also the boundaries mentioned in the evidence of defendants and in the cross-examination of the

plaintiff. On comparison of the boundaries of the suit property as mentioned by the plaintiff in cross-examination, defendant in his written statement and the boundaries reflected in the sale deed, the learned first appellate Court came to conclusion that the property purchased by the defendant is property bearing Gat No.295. The learned first appellate Court has thereafter referred to Hissa Form-IV and has held that the total area of Gat No.295 was 0.07 HR. Referring to the boundaries and the areas mentioned in Hissa Form-IV, the learned first appellate Court has held that the defendant had purchased entire 0.07 HR land in Gat No.295. Since the sale deed of defendant is prior in point of time, the learned first appellate Court held that the defendants were absolute owners of the suit property.

6) As regards the possession, the sale deed dated 01/06/1979 contains a positive statement regarding delivery of possession to the purchasers/defendants. The defendants' vendor is the plaintiff's grandfather who, sold the property to the defendants during his lifetime on 01/06/1979. The plaintiff's vendor is his father. Since the grandfather had already sold the suit property, the plaintiff's father had no title to sell the suit property to the plaintiff. The sale deed dated 18/06/2014, executed in favour of plaintiff, therefore does not confer any title upon him.

7) The learned first appellate Court has appreciated the evidence on record and has recorded finding that although the gat number is not mentioned in the sale deed of the defendants, the description of the property mentioned in the sale deed is sufficient to arrive at conclusion that the same is the land bearing Gat No.295 i.e. the suit property. These findings are pure findings of fact which cannot be interfered with.

- 8) In view of above, Second Appeal does not give rise to any substantial question of law, and is dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)