



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

SECOND APPEAL NO.175 OF 2025

APPELLANTS

On R.A. (Ori. Defs)

- :-** 1) Prabhudas Tulsiram Deshmukh
Since deceased through his LR.
- a) Vandana W/o Prabhudas Deshmukh
Age about 40 years, Occ: Household,
- b) Yogesh S/o Prabhudas Deshmukh,
Age about 45 years, Occ: Cultivator,
- c) Lokesh S/o Prabhudas Deshmukh,
Age about 43 years, Occ: Cultivator,
- d) Varsha D/o Prabhudas Deshmukh,
Age about 39 years, Occ: Cultivator,
All (a) to (d) R/o Pathari, Tah Sakoli Dist.
Bhandara.
- e) Sau. Alka W/o Arun Pache,
Age about 42 years, Occ. Cultivator
R/o Kuhradi, Tah. Goregaon, Dist.
Gondiya.
- 2) Shantabai Sukhadas Tikapache
Aged about 42 years, Occ. House Wife,
R/o Petrol Pump, Thana Tah. & District
Bhandara.

..VERSUS..

- RESPONDENTS** :- 1) Shishupal W/o Patiram Tarjule
On R.A. (Ori. Plnt.) Aged about 64 years, Occ. Cultivator.
- 2) Sunil S/o Patiram Tarjule
Aged about 55 years, Occ. Cultivator.
- 3) Babalu S/o Patiram Tarjule
Aged about 55 years, Occ. Govt. Servent.
All 1 to 3 R/o Sendurwafa, Tah. Sakoli,
Dist. Bhandara – 441802.

WITH
APPEAL AGAINST ORDER NO.07 OF 2025

- APPELLANTS** :- 1) Prabhdas Tulsiram Deshmukh
On R.A.(Ori. Defs) Since deceased through his LR.
- a) Vandana W/o Prabhudas Deshmukh
Age about 40 years, Occ: Household,
- b) Yogesh S/o Prabhudas Deshmukh,
Age about 45 years, Occ: Cultivator,
- c) Lokesh S/o Prabhudas Deshmukh,
Age about 43 years, Occ: Cultivator,
- d) Varsha D/o Prabhudas Deshmukh,
Age about 39 years, Occ: Cultivator,
All (a) to (d) R/o Pathari, Tah Sakoli Dist.
Bhandara.
- e) Sau. Alka W/o Arun Pache,
Age about 42 years, Occ. Cultivator

R/o Kuhradi, Tah. Goregaon, Dist.
Gondiya.

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All 1 to 3 R/o Sendurwafa, Tah. Sakoli,
Dist. Bhandara – 441802.

Mr. U.K. Bisen, Advocate for Appellants.
Mr. A.M. Chandekar, Advocate for Respondents.

CORAM : ROHIT W. JOSHI, J.

DATE : 17/02/2026

ORAL JUDGMENT :

1. The substantial question of law is not framed in the
present appeal. However, following substantial question of law

was framed in connected second appeal being Second Appeal No.175 of 2025 vide order dated 09.07.2025, which reads as under :-

“Whether the first appellate Court committed grave error in allowing the application under Order VI Rule 17 of CPC for amendment thereby respondent/original plaintiff sought the relief of declaration of ownership beyond the period of limitation i.e. after 13 years by ignoring the provisions of Limitation Act.”

2. The learned Advocates are *ad idem* that the said substantial question of law in fact arises for consideration in the present Appeal Against Order. They make a joint request to hear the present Appeal Against Order finally on the aforesaid substantial question of law.

3. The respondents who are the original plaintiffs had filed a suit for perpetual injunction against the present appellant *inter alia* contending that they had purchased the suit property which comprises of an agricultural land admeasuring around 13 acres from Tulshiram Deshmukh, father of the defendant. Their contention was that the defendants were trying to disturb their possession over the suit field, as a consequence of which, they were required to file the aforesaid suit seeking decree for perpetual injunction for restraining the defendants from disturbing their

possession over the suit property. The defendants are son and daughter of vendor Tulsiram. The defendants filed a counter claim *inter alia* seeking decree for perpetual injunction with respect to 4.25 acres of land purchased by father of the plaintiffs from Tulsiram. Vide judgment and decree dated 29.07.2017 by the learned Civil Judge Junior Division, Sakoli, dismissed the suit as well as the counter claim. The plaintiffs preferred appeal being Regular Civil Appeal No.28 of 2023 challenging the decree to the extent of dismissal of aforesaid suit filed by them. The defendants have not filed appeal or cross-objection challenging dismissal of their counter claim.

4. In Regular Civil Appeal No.28 of 2023, the plaintiffs filed two applications one under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment of plaint dated 29.06.2024, vide Exh.38, in order to incorporate a prayer of declaration of ownership over the suit property and another application dated 10.01.2024, vide Exh.33, for permission to lead additional evidence. The learned Appellate Court had initially passed an order stating that application for amendment would be decided at the stage of final hearing. The appellants/plaintiffs had challenged the said order before this Court vide Writ Petition No.5991 of 2024.

The said petition came to be dismissed vide order dated 10.01.2025. Accordingly, the applications for amendment of plaint and permission to lead additional evidence were taken up for hearing along with the hearing of the appeal. While deciding the appeal vide judgment dated 11.04.2025, the learned First Appellate Court has allowed the application for amendment of plaint as also the application for permission to lead additional evidence filed vide Exhs.38 and 33 respectively. Having allowed the said applications, the learned First Appellate Court has quashed the judgment and decree passed by the learned trial Court whereby the suit filed by the plaintiff was dismissed and has remanded the suit to the learned trial Court for deciding the same afresh in accordance with law. The present appeal is preferred by the original defendants challenging the order of remand.

5. Mr. Bisen, learned Advocate for the appellants contends that the application for amendment was filed in order to seek declaration of ownership at the stage when appeal was posted for final hearing. Mr. Bisen, contends that the civil suit is filed in the year 2010 and the application for amendment is filed after a period of 14 years from the date of institution of the suit. He further contends that there was a cloud on the title of the plaintiffs, in view

of adverse orders passed by the Revenue Authorities in the litigation between the parties with respect to sale deed in question before the Revenue Authorities. Mr. Bisen, therefore contends that the plaintiff's explanation for incorporating prayer for declaration after 14 years that revenue litigation was finally decided in favour of the defendants by the Hon'ble Supreme Court, cannot be a ground for allowing the application for amendment. He further contends that the prayer for declaration is barred by Article 58 of the Limitation Act.

6. As regards the application for permission to lead additional evidence, Mr. Bisen, contends that although certified copy of Index-2 register with respect to sale deeds in question were filed by the plaintiffs, original sale deeds were not filed on record. He states that merely photocopies of the sale deeds were filed on record and therefore the trial Court has discarded the sale deeds. He contends that the plaintiffs should have been aware that in order to exhibit the sale deeds, it was necessary for them to file the original sale deeds. Mr. Bisen, therefore contends that the appeal ought to have been decided on the basis of available record and in the light of rival pleadings as they stood on the date of adjudication of the civil suit by the learned trial Court.

7. *Per contra*, Mr. Chandekar, learned Advocate for the respondents contends that execution of sale deed in favour of the plaintiffs is not disputed by the defendants. He points out that the case of the defendants is that the sale deeds were got executed from their father Tulshiram under influence of liquor. Mr. Chandekar, therefore contends that in view of the aforesaid, declaration of ownership was not initially sought and it is only after adjudication of litigation with respect to mutation entries by the Hon'ble Supreme Court, need for seeking declaration was felt. As regards the application for permission to lead additional evidence, the contention of Mr. Chandekar is that certified copies of the sale deeds were already filed on record and in view of the case of defendants wherein execution of the sale deeds was not disputed, the learned trial Court ought to have marked the sale deeds at exhibits. Mr. Chandekar, therefore contends that the application for permission to lead additional evidence should be allowed in view of Order 41 Rule 27(a) of the Code of Civil Procedure.

8. The facts of the case will demonstrate that execution of the sale deeds with respect to suit property by father of the defendants in favour of the plaintiffs are not in dispute. The defendants however have come up with a case of fraud alleging that

the sale deeds got executed by the father while he was under influence of liquor.

9. It is also not in dispute that revenue litigation between parties was ongoing prior to institution of the civil suit. The fact that the defendants were questioning the title of the plaintiffs was therefore well within the knowledge of the plaintiffs on the date of filing of the civil suit. In the considered opinion of this Court, adjudication of revenue litigation by the Supreme Court cannot be a ground for seeking amendment in plaint in order to incorporate prayer for declaration of ownership after a period of 14 years from the date of institution of the suit.

10. The contention of Mr. Bisen, that adjudication of revenue litigation by the Hon'ble Supreme Court cannot be a ground for allowing the application for amendment, needs to be accepted.

11. As regards the application for permission to lead additional evidence, the learned First Appellate Court has allowed the said application on the ground that prayer for amendment of plaint was allowed and therefore it was necessary to permit the parties to lead additional evidence. Since this Court has come to the conclusion that application for amendment of plaint is erroneously

allowed, the order granting permission to lead additional evidence is also required to be set aside.

12. The contention of Mr. Chandekar, that the execution of sale deeds is not in dispute and that copies of the sale deeds are already on record and therefore the same should be exhibited by the learned trial Court is left open to be decided by the learned First Appellate Court. It is obvious that if the learned First Appellate Court deems that the sale deeds are admissible in evidence having regard to the pleadings of defendants, it can read the same in evidence. The learned First Appellate Court may also consider as to whether execution of sale deeds in favour of plaintiffs by the father of defendants is in dispute or not.

13. In the aforesaid, the appeal against order deserves to be allowed in the following terms :-

- i) Judgment and order dated 11.04.2025, passed by the learned District Judge-2, Bhandara, in Regular Civil Appeal No.28 of 2023, is quashed and set aside.
- ii) Application for amendment of plaint at Exh.38 and for permission to lead additional evidence at Exh.33 in Regular Civil Appeal No.28 of 2023 are **rejected**. The learned First Appellate Court is directed to decide the

appeal on merits on the basis of available records and pleadings. Parties to appear before the learned First Appellate Court on **16.03.2026**.

- iii) Parties to note that separate notice for appearance will not be issued.

SECOND APPEAL NO.175 OF 2025

- iv) In view of the judgment delivered in Appeal Against Order No.07 of 2025, Mr. Bisen, learned Advocate for the appellants seeks permission to withdraw the Second Appeal No.175 of 2025. Accordingly, Second Appeal No.175 of 2025 is **disposed of** as withdrawn.

(ROHIT W. JOSHI, J.)

C.L. Dhakate