



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

SECOND APPEAL NO.148 OF 2025

APPELLANTS

(Orig. Plaintiff)
(On R.A.)

- :-**
- 1) Rajendra Shamrao Deshmukh,
Aged about 58 years, Occupation :
Agriculturist, R/o Tukdoji Nagar, Nagpur.
 - 2) Smt. Pushpatai Kashirao Deshmukh
Aged about 75 years, Occ. Retired,
 - 3) Subhash Kashirao Deshmukh,
Aged about 71 years, occ. Business,
 - 4) Chetan Kashirao Deshmukh,
Aged about 34 years, Occupation :
Education,
 - 5) Vaibhav Kashirao Deshmukh,
Aged about 32 years, Occupation :
Education,
 - 6) Jayshree Kashirao Deshmukh,
Aged about 45 years, Occupation :
Household,
 - 7) Meenatai Arvind Deshmukh,
Aged about 72 years, Occupation :
Retired,
 - 8) Veenatai Kashirao Ulhe,
Aged about 68 years, Occupation :
Retired,
 - 9) Ravindra Kashirao Deshmukh,
Aged about 64 years, Occupation :
Retired,

- 10) Arti Nilesh Raut,
Aged about 46 years, Occ. Service, Nos.2
to 10 R/o Chandak Bunglow, Camp,
Amravati, Tq. & District – Amravati.
- 11) Leelabai Shamrao Deshmukh (Died)
- 12) Suman Shamrao Deshmukh (Died)
- 13) Mangala Balasaheb Wagh,
Aged about 78 years, Occupation :
Household, R/o. Tukdoji Nagar, Nagpur,
Tah. & Distt. Nagpur. Through Power of
Attorney Holder Shri Niteen Kashirao
Deshmukh, Aged about 48 years,
Occupation : Business, R/o. C/o.
Madhukar Belsare, Sanmati Colony,
Amravati, Tah. and District – Amravati.

..VERSUS..

RESPONDENT :- Prashant S/o Ruprao Deshmukh, Aged
(Orig. Defd.)
(On R.A.) about 55 years, Occupation :
Agriculturist, R/o. Banosa, Tah. Daryapur,
District – Amravati.

Mr. A.R. Ingole, Advocate for Appellants.
Mr. V.S. Bapat, Advocate for Respondent.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **14/01/2026**

ORAL JUDGMENT :

1. The present appellants are the original plaintiffs and the respondent is the original defendant. Plaintiffs have filed a suit for

declaration of ownership and perpetual injunction against the respondent, *inter alia*, claiming ownership over the suit property, which is part and parcel of land bearing Gat No.176, admeasuring 2.84 H.R., out of total area of 3.65 H.R., situated at Shiver Bz., Tah. Daryapur, Dist. Amravati.

2. It is the case of the plaintiffs that the entire land bearing Gat No.176 was initially owned by Yashwant Deshmukh, who had five sons namely Ramrao, Shamrao, Dinkarrao, Kashirao and Ruprao. Plaintiffs are decedents of Shamrao and Kashirao. The defendant is the son of Ruprao. Ramrao's two sons died unmarried. Dinkar sold his 0.91 H.R. share in the aforesaid land to Kashirao.

3. The case of the plaintiffs is that Dinkarrao has sold his share in the said property to his brother Kashirao. The plaintiffs claimed ownership over the land admeasuring 2.84 H.R. accordingly. It will be pertinent to state that Kashirao had filed a suit being Regular Civil Suit No.103 of 1990 against Ruprao seeking perpetual injunction with respect to land admeasuring 1.90 H.R. out of Gat No.176. The said suit was decreed and the judgment and decree passed therein has attained finality.

4. It will also be pertinent to state that the plaintiff No.1/ Rajendra Shamrao Deshmukh, had filed a suit being Regular Civil

Suit No.13 of 1999 against one Arun Gawande and Ruprao, which was subsequently withdrawn.

5. The defendant filed written statement denying that Dinkarrao has sold 0.91 H.R. land to Shamrao. The defendant also denied that Ruprao has sold his land to Sharadkumar Deshmukh. The defendant denied that the plaintiffs were in possession of 2.84 H.R. of land. He claims to be in possession of remaining land excluding 1.90 H.R. land.

6. The learned trial Court has decreed the suit, holding that the plaintiffs had proved their ownership over 2.84 H.R. land in Gat No.176 and were also in possession of the same. Accordingly, a decree for perpetual injunction restraining the defendant from disturbing the plaintiffs' peaceful possession was passed against the defendant.

7. Aggrieved by the said decree, defendant filed Appeal being Regular Civil Appeal No.70 of 2015. The learned First Appellate Court has partly allowed the appeal by maintaining the decree for declaration and injunction to the extent of 1.90 H.R. of land and setting aside the same with respect to the remaining 0.94 H.R. of land.

8. The learned trial Court has observed that in view of

decree in Regular Civil Suit No.103 of 1990, the claim of plaintiffs to the extent of 1.90 H.R. land could not be disputed. With respect to the remaining portion of land, the learned trial Court has observed that Regular Civil Suit No.13 of 1999 filed by plaintiff No.1 against Ruprao and Arun Gawande was compromised with Arunrao Gawande and accordingly, the suit was withdrawn. It is observed that although Ruprao opposed the compromise, the learned trial Court had permitted withdrawal of the suit. In view of the aforesaid claim of the plaintiffs with respect to entire 2.84 H.R. land is accepted. The learned First Appellate Court, as stated above, has maintained the decree with respect to 1.90 H.R. of land.

9. As regards 0.94 H.R. land, the learned First Appellate Court has referred to the proceedings in Regular Civil Appeal No.13 of 1999. It is stated that the said suit was filed by the Kashirao against Ruprao and Arun Gawande. Kashirao was seeking possession of the suit property from the defendant in the said suit namely Arun Gawande and Ruprao. The learned First Appellate Court has referred to the compromise deed in the said suit which at Exh.73. It is found that, Kashirao had recognized the possession of Arunrao Gawande and had also agreed to execute sale deed in his favour. The suit was withdrawn in view of the said compromise. The

learned First Appellate Court has thereafter referred to a document at Exh.104, under which the said Arunrao Gawande has released possession of the remaining portion of the suit property in favour of Ruprao. The learned First Appellate Court has observed that, Kashirao was not in possession of the suit property, as was evident from the compromise deed at Exh.73 and had recognized the possession of Arun Gawande, who in turn delivered possession of the same to Ruprao, father of defendant.

10. Apart from this, the learned First Appellate Court has referred to revenue records from the year 1967 till the year 2009, and found that all throughout the suit property was shown to be in possession of Ruprao. However, in view of the decree passed in Regular Civil Suit No.103 of 1990, the learned First Appellate Court has maintained the decree to the extent of 1.90 H.R. of land.

11. It is clear that the judgment and decree passed by the learned trial Court with respect to area of suit property excluding 1.90 H.R. is based on a misreading of the compromise deed at Exh.73. By virtue of the said compromise, possession of the land was retained by Arun Gawande and not by Kashirao, as is misconceived by the trial Court. This Arun Gawande has thereafter, delivered possession to the defendant's father, Ruprao.

12. The reasoned judgment delivered by the learned First Appellate Court is based on proper appreciation of the evidence. It has rightly reversed judgment of the learned trial Court to the extent of 0.94 H.R. land since the same was based on misinterpretation of compromise between Kashirao and Arun Gawande (Exhibit-73). In view of the above, the judgment passed by the learned First Appellate Court reversing the findings recorded by the learned trial Court is just and proper.

13. The appeal does not give rise to any substantial question of law, the same is therefore **dismissed** as under :-

- i. Judgment and decree dated 15.05.2025, passed by the learned District Judge-2, Achalpur, in Regular Civil Appeal No.70 of 2015 is confirmed and Judgment and decree dated 24.02.2015, passed by the learned 2nd Jt. Civil Judge (Jr.Dn.), Daryapur, in Regular Civil Suit No.18 of 2010 stands modified as per the aforesaid judgment and decree passed by the learned First Appellate Court.
- ii. Parties to bear their own costs.

(ROHIT W. JOSHI, J.)