IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 234 OF 2002

varsha

	Rangnath Shivram Medankar (since deceased), Residing at Chakan (Modankar Vasti) Taluka: Khed, District- Pune.	]
1a)	Dattatray Rangnath Medankar R/at: Chakan (Medankar Vasti) Tal: Khed, District Pune.	]
1b)	Subhash Rangnath Medankar R/at: Chakan (Medankar Vasti) Tal: Khed, District Pune.	]
1c)	Laxman Rangnath Medankar R/at: Chakan (Medankar Vasti) Tal: Khed, District Pune.	]
1d)	Vilas Rangnath Medankar R/at: Chakan (Medankar Vasti) Tal: Khed, District Pune.	]
1e)	Sushila Abasaheb Murhe R/at: Post Kurali(Murhe Wasti) Tal: Khed, District Pune.	] … Appellant (Orig. Plaintiff)

V/s.

Maruti Dyanoba Medankar,]
Residing at Chakan(Medankar Vasti),]
Taluka: Khed, District : Pune.] … Respondent
(Orig. Defendant)

WITH
INTERIM APPLICATION NO. 14691 OF 2023
IN
SECOND APPEAL NO. 234 OF 2002

1) Rangnath Shivram Medankar]
since deceased through legal heirs]… Applicants

<u>IN THE MATTER BETWEEN</u>

Rangnath Shivram Medankar]
(since deceased) through Legal Heirs] … Appellant

V/s.

Maruti Dyanoba Medankar,] … Respondent

Mr. Drupad S. Patil a/w. Mr. Namitkumar S. Pansare for the Appellant.

Mr. Hemant Ghadigaonkar a/w. Mr. Sandesh More, Mr. Satish Aher, Mr. Hitendra Gandhi, Mr. Om. Gandhi, Mr. Akash Jawale for the Respondent.

CORAM : GAURI GODSE, J.
RESERVED ON : 5th FEBRUARY 2026
PRONOUNCED ON : 8th JUNE 2026

JUDGMENT:

1) This second appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing his suit. During the pendency of this appeal, the original plaintiff expired, and his heirs and legal representatives have been brought on record as appellants. The plaintiff filed the suit seeking a declaration that the defendant has no right, title or interest of whatsoever nature in the suit property. The plaintiff prayed for a further declaration that, based on Mutation Entry No. 4251, dated 15th May 1992 ("ME No. 4251") the defendant was not entitled to obstruct the plaintiff's possession as owner of the suit property. The plaintiff also prayed for an injunction restraining the defendant from obstructing his possession of the suit property.

2) The Interim Application seeks permission to produce documents on the record as additional evidence. Since the additional documents are copies of subsequent orders passed by the revenue authorities, there was no opposition to relying on and referring to

them. Hence, the photocopies annexed to the Interim Application were permitted to be referred to and relied upon to the extent of examining their effect on the prayers in the suit and whether they can be permitted to be produced on record as additional evidence.

3) The second appeal is admitted by framing a substantial question of law vide order dated 24th November 2005, which reads as under:-

> *"Heard. Admit. In view of Exhs 65 and 66 the finding given by Court below is perverse or correct?"*

PLEADINGS IN THE PLAINT:

4) The suit is filed in respect of the agricultural land bearing Survey No. 178/2A and Survey No. 178/2B, which originally was Survey No. 178/2. The said survey number is allotted Gat No. 952 for a total area of 73 Ares ("suit property"). The suit property was originally owned by the defendant's grandfather, that is, Mahadu Jijaba Medankar ("Mahadu"). Out of the suit property, Survey No. 178/2A, admeasuring 36.5 gunthas, was purchased by the plaintiff's grandfather, that is, Krishna Bholu Medankar ("Krishna"), from Mahadu, and since then, he was cultivating it as the owner. Thereafter, the plaintiff's father ("Shivram") was cultivating it, and thereafter the plaintiff is cultivating the same. Similarly, Survey No.

178/2B was given to Krishna by Mahadu for cultivation in 1946, and the said land is also in possession of the plaintiff. Thus, the suit property was always in the possession and cultivation of the plaintiff's grandfather, Krishna, then of the plaintiff's father, Shivram, and then of the plaintiff.

5) When the consolidation scheme was implemented, Survey Nos. 178/2A and 178/2B were allotted Gat No. 952. The plaintiff's grandfather, Krishna, expired on 20th January 1960. During his lifetime, he had partitioned all his properties, and Survey No. 178/2A was allotted to the plaintiff's father, Shivram, and the plaintiff received it after the death of the plaintiff's father on 31st March 1987.

6) The defendant's grandfather, Mahadu, had obtained a Tagai loan; hence, in the revenue record, entries were made in the government's name as the loan was not repaid. Although the plaintiff's grandfather, Krishna, had purchased Survey No. 178/2A, the entry was not made in the revenue record; hence, an incorrect entry was made even for the said survey number in the name of the government. The defendant claimed to have repaid the loan and requested that the suit property be regranted to him. An order of regrant was passed, and the defendant's name was recorded in the record of rights, which the plaintiff challenged by filing revenue

proceedings. There was a threat of dispossession; hence, the suit was filed.

PLEADINGS IN THE WRITTEN STATEMENT:

7) The defendant denied the suit claim on the ground that the plaintiff or his family was not concerned with the suit property. The defendant's great-grandfather, Jijaba, and the plaintiff's grandfather, Krishna, were real brothers. In 1941, there was a partition among them, and Survey No. 178/2 was allotted to Jijaba's share. Thereafter, from Survey No. 178/2, Jijaba sold an area of 36.5 gunthas to Krishna on 4th July 1947, on the condition of repurchase. Accordingly, Survey No. 178/2 was subdivided, and Survey No. 178/2A was allotted to Krishna, and Survey No. 178/2B was allotted to Jijaba. After the death of the defendant's great-grandfather, Jijaba, his grandfather, Mahadu, re-purchased Survey No. 178/2A from the plaintiff's grandfather, Krishna, on 11th March 1949. The defendant denied that Survey No. 178/2B was given to the plaintiff's grandfather for cultivation. Defendant contended that it was always in possession and cultivation with the defendant's forefathers.

8) Thus, Survey Nos. 178/2A and 178/2B being owned and in possession by the defendant's forefathers, his grandfather, Mahadu,

had availed the Tagai loan. However, the defendant's grandfather was unable to repay the loan; as a result, the property was auctioned and vested in the Government. However, the defendant's forefathers and the defendant thereafter were always cultivating the suit property, though the government's name was entered in the revenue record. Incorrect entries were made in the revenue record for the cultivation entries up to 1974-75. The transaction, if any, between Mahadu and Krishna was illegal as the suit property vested in the government. Since the suit property had always been in the possession of the defendant's family, in the consolidation scheme it was recorded to the defendant's father's Account No. 330.

9) According to the defendant, ME No. 4251 was based on the order passed by the learned Collector for the regrant of the suit property in favour of the defendant. Hence, according to the defendant, the suit property was initially auctioned and vested in the government; however, it was regranted to the defendant by following due process of law. The defendant thus claimed ownership and possession of the suit property.

FINDINGS BY BOTH COURTS:

10) The trial court held that the plaintiff failed to prove that the

plaintiff was an absolute owner and in possession of the suit property. As per the plaintiff's pleading, Survey No. 178/2B was owned by Mahadu Jijaba, that is, the defendant's grandfather. The plaintiff's grandfather purchased Survey No. 178/2A, and the defendant's grandfather repurchased it. The plaintiff, in his oral evidence, contended that Survey No. 178/2 was purchased by Krishna and Jijaba, who each held a half share. However, the sale deed is silent about the extent of shares. The plaintiff has pleaded Survey No. 178/2B was owned by Mahadu and Survey No. 178/2A was purchased by Krishna. It is contended by the plaintiff in oral evidence that, as per the Sale Deed, Exhibit 66, Krishna purchased half the share of Survey No. 178/2, and subsequently also purchased the remaining half share from Mahadu. However, the oral evidence of the plaintiff is contrary to the pleadings. The trial court found the defendant's case to be probable, namely, that in the 1941 partition, Survey No. 178/2 was allotted to Jijaba, and that Jijaba subsequently sold 36.5 gunthas to Krishna on 4th July 1947. The Mutation Entry No. 6606 at Exhibit 95A supported the theory of partition in 1941. Thus, the trial court held that Survey No. 178/2A was allotted to Krishna, and the remaining property was allotted Survey No. 178/2B in the name of Jijaba. The plaintiff's theory of possession on the ground that

Survey No.178/2B was given to him for cultivation by Mahadu is also disbelieved for want of evidence.

11) The fact that the defendant’s grandfather, Mahadu, had purchased 178/2A from the plaintiff’s grandfather, Krishna, was suppressed by the plaintiff. The Mutation Entry 7824 at Exhibit 89 and the Index II at Exhibit 85 show that Mahadu had purchased 178/2A from Krishna on 11th March 1949, and that conferred exclusive title of the suit property to the defendant. The sale deed at Exhibit 66 is interpreted to mean that only 36.5 gunthas from the eastern side of Survey No. 178/2A was sold to Krishna by Mahadu on 17th March 1953 and not the entire suit property. However, in view of the public auction on 10th November 1952, the government became the owner of the suit property; hence, the sale deed in favour of Krishna in 1953, without the government's permission, was void.

12) The plaintiff’s theory of possession was disbelieved on the ground that the mutation entries at Exhibits 58 to 62 recorded that the property was in custody of the government and Krishna’s name was circled and shown in the cultivation column from 1954 to 1975-76. However, the name of Krishna was entered in the cultivation column on the strength of the yearly lease, that is, Kabuliyat, and it was found unbelievable that Krishna was cultivating the land or in possession as

owner. The trial court held that in the consolidation scheme, the suit property was shown as government land and entered in the defendant's account no. 330. The tax payment receipts produced by the plaintiff were held as insufficient proof of possession. Since the loan amount was shown to have been paid by the defendant and his name was entered in the revenue record, the plaintiff’s theory of possession was disbelieved.

13) The first appellate court confirmed the findings of the trial court, holding that the plaintiff failed to prove his title to the suit property on the strength of the documents at Exhibits 65 and 66. It is held that the sale at Exhibit 65 does not mention that Krishna and Jijaba had one-half share each in Survey Number 178/2. The plaintiff pleaded that the suit property was owned by the defendant’s grandfather, Mahadu, and thereafter Survey No. 178/2A was purchased by Krishna from Mahadu. It was pleaded by the plaintiff that Survey No. 178/2B was given by Jijaba to Krishna for cultivation in 1946; however, there was no evidence to support the plaintiff’s theory of possession. Even the first appellate court accepted the defendant’s case that, in the 1941 partition, Survey No. 178/2 was allotted to Jijaba and that he sold 36.5 gunthas to Krishna on 4th July 1947. Therefore, by examining the sale deeds and the revenue

record, it was held that Survey No. 178/2A came in possession of Krishna, and the remaining property, that is, Survey No. 178/2B remained with Jijaba. The sale deed dated 17th March 1953, at Exhibit 66 by Mahadu in favour of Krishna, was interpreted to mean that 36.5 gunthas of land out of Survey No. 178/2A was purchased by Krishna and not the whole suit property.

14) Since the revenue record showed Krishna's name in the cultivation column based on the Kabuliyat issued by the government and the name of the government shown in the ownership column, the plaintiff's theory of possession and cultivation as owner was disbelieved. The 1953 sale deed at Exhibit 66 by Mahadu in favour of Krishna was after the government auction in 1952. The sale deed of 1953 at Exhibit 66 was in respect of 36.5 gunthas from Survey No. 178/2A. Hence, none of the documents showed that the plaintiff was the absolute owner of the entire suit property and that he was in possession and cultivation thereof. The first appellate court confirmed the trial court's findings and thus dismissed the appeal filed by the plaintiff.

<u>SUBMISSIONS ON BEHALF OF THE APPELLANTS (PLAINTIFF)</u>.

15) Learned counsel for the appellants submitted that 7/12 extracts of suit property from 1954 onwards were produced before the

Trial Court at Exhibits 58 to 64, which support the plaintiff's case of ownership and possession. On 18th August 1938, the plaintiff's grandfather, Krishna and the defendant's great-grandfather, Jijaba, jointly purchased the suit property bearing Survey No. 178/2, admeasuring 1 acre 33 gunthas, from Bhiku Krishna Mungase, and the sale deed is produced at Exhibit 65. On 4th July 1947, Jijaba executed the sale deed for 36½ gunthas in favour of Krishna. On 12th November 1947, the effect of the sale deed dated 4th July 1947 was given in the revenue record vide Mutation Entry No. 7379 dated 12th November 1947, at Exhibit 88. As recorded in the said mutation entry, Survey No. 178/2A was entered in the name of Krishna and Survey No. 178/2B was entered in the name of Jijaba.

16) After the sale deed was executed in favour of the plaintiff's grandfather, Krishna, the defendant's great-grandfather, Jijaba, took a Tagai loan of Rs. 1000/- on 22nd August 1947. On 23rd February 1949, Jijaba died. On 13th March 1949, Mahadu, son of Jijaba, i.e. grandfather of the defendant, repurchased 36.5 gunthas from Krishna. The effect of the said sale deed was given in the revenue record vide Mutation Entry No. 7824, Exhibit 89. On 17th March 1953, the defendant's grandfather, Mahadu, sold 36.5 gunthas to the plaintiff's grandfather, Krishna.

17) On 7th August 1954, the learned Collector passed an order to take possession of lands bearing Survey Nos. 178/2A and 178/2B, which were subjected to auction for default in repayment of the Tagai loan. On 24th August 1954, the Government took possession of the lands, and Mutation Entry No. 10393 was certified to record the Government's name for Survey Nos. 178/2A and 178/2B. On 26th August 1954, Krishna, the grandfather of the plaintiff, submitted an application seeking restoration of possession on the ground that he had lawfully purchased the said lands, and even the loan had been repaid. On 5th March 1957, Krishna, through his son Shivram, the plaintiff’s father, again submitted an application seeking restoration of possession. In 1957, the government granted Krishna the suit land on a one-year lease by issuing Sanads (Kabulayats), Exhibits 69, 71 and 93.

18) Thereafter, Mahadu, the defendant’s grandfather, died. On 18th September 1969, Dnyanoba, the defendant’s father, gave a statement that he had no objection to the regrant of lands in favour of the sons of Krishna. In 1976, in the consolidation scheme, Survey Nos. 178/2A and 178/2B were allotted Gat No. 952 admeasuring 0 H 73R. The relevant extracts of the scheme were produced at Exhibit 84. As per the said extract, the name of Government/ Akari Pad is

recorded in the ownership column at Khata No. 330. Thereafter, Dnyanoba died. In 1992, the defendant applied for the regrant of Gat No. 952. On 8th April 1992, his application for regrant was allowed by the Sub-Divisional-Officer ("SDO"). Therefore, Mutation Entry No. 4251 (Exhibit 82) dated 15th May 1992 was effected to record the name of the defendant. In 1992, since the defendant tried to disturb possession, the appellant filed the suit.

19) Learned counsel for the appellants, therefore, submitted that the plaintiff's grandfather, Krishna, and the defendant's great-grandfather, Jijaba had jointly purchased Survey No.178/2. Jijaba sold 36.5 gunthas, i.e. ½ of Survey No. 178/2, to Krishna. Since, by the 1938 sale deed, the entire survey number was jointly purchased, after 36.5 gunthas was sold to Krishna by Jijaba, the entire survey number vested in Krishna. However, the said sale deed was not available to be produced in evidence. Jijaba availed the Tagai loan on 27th August 1947 after he sold ½ share to Krishna. Jijaba died on 23rd February 1949. Mahadu, the defendant's grandfather, had repurchased 36.5 Gunthas from Krishna on 13th March 1949, and the effect thereof was recorded in Mutation Entry No. 7824, Exhibit 89. Though the sale deed was not produced on record, the certified copy of Index-II was produced at Exhibit 85. Mahadu, the defendant's

grandfather, sold the land to Krishna, that is, the plaintiff's grandfather, by sale deed dated 17th March 1953, Exhibit 66. Therefore, the half share that was repurchased by Mahadu vested back in Krishna. Therefore, Krishna was the absolute owner of Survey No. 178/2 in view of the sale deeds at Exhibits 65 and 66.

20) Thus, the order of regrant in 1992 in the name of the defendant cannot be accepted as a document of title, as the land was already sold to the plaintiff's grandfather. Thus, the mutation entry no. 4251, based on the order of regrant, would not confer any title in the name of the defendant. Learned counsel for the appellants, therefore, submitted that the sale deeds produced on record at Exhibits 65 and 66 were the title documents in the name of the plaintiff's grandfather. In the consolidation scheme implemented in 1976, Gat No. 952 was entered in the ownership column of Khata No. 330 in the name of the government, as the Tagai loan was availed. Both courts have wrongly held that the Account No. 330 was in the defendant's name. Therefore, the subsequent entries in the revenue record and the consolidation scheme in the name of the government would not divest the plaintiff's grandfather of the title vested in him based on the registered sale deeds.

21) Learned counsel for the appellants referred to the relevant

findings of both courts for accepting the defendant's title based on repayment of the Tagai loan and mutation entries. He submitted that both courts have misinterpreted the title documents at Exhibits 65 and 66 by referring to the revenue record and the order of regrant based on the defendant's evidence for repayment. The findings recorded by both the courts in dismissing the plaintiff's suit would not be sustainable, as the title documents at Exhibits 65 and 66 would confer absolute ownership on the plaintiff's grandfather. Hence, subsequent mutation entries and the consolidation entries in the name of the government would not divest the plaintiff's grandfather of the title vested in him based on the title documents. Learned counsel for the appellants therefore submitted that the question of law must be answered in favour of the appellants by holding that the findings recorded by both the courts in disbelieving Exhibits 65 and 66 on the ground of mutation entries are perverse and thus, would not be sustainable in law.

22) Learned counsel for the appellants relied upon the copies of the documents produced along with the Interim Application. The order of regrant in the name of the defendant was passed on 8th April 1992. The suit was filed on 18th June 1992. The plaintiff filed RTS Appeal No. 90 of 1992 to challenge the regrant order. The appeal was

allowed on 21st September 1992, setting aside the regrant in favour of the defendant, and the suit property was ordered to be restored to the plaintiff. The defendant had preferred a revision application before the Divisional Commissioner, which was partly allowed on 14th January 1995, and the matter was remanded to the learned SDO for a fresh hearing. The suit was dismissed on 5th July 1999. In the meantime, the plaintiff had preferred the first appeal to challenge the dismissal of his suit.

23) After the order of remand, the dismissal of the defendant's regrant application and the restoration order in favour of the plaintiff were confirmed. The defendant therefore filed an appeal before the learned Collector, which was partly allowed on 29th November 2001, and the matter was again remanded back to the learned SDO. After the remand, the learned SDO partly allowed the appeal on 14th June 2010 and remanded the matter to the learned Tahasildar for fresh consideration of the defendant’s application for regrant. After the remand, the learned Tahasildar passed an order on 6th September 2014, refusing the defendant’s prayer for regrant and confirming the restoration order in favour of the plaintiff. The defendant again preferred an appeal before the SDO, which was dismissed on 4th September 2015. In the meantime, the first appeal preferred by the

original plaintiff was dismissed on 23rd January 2002, and the present second appeal was filed.

24) The second appeal was admitted on 24th November 2005. During the pendency of the second appeal, the original plaintiff, Ranganath, expired sometime in 2017. The present appellants were thereafter brought on record as his heirs and legal representatives. Their names were also recorded in the revenue record vide Mutation Entry No. 4014. The defendant challenged the said mutation entry by filing an RTS Appeal, which was dismissed on 19th September 2018. The second RTS Appeal preferred by the defendant was also dismissed on 15th June 2023. Accordingly, the mutation entries in the name of the original plaintiff and the present appellants were confirmed.

25) Since these orders rejecting the defendant's application for regrant and confirming restoration order in favour of the plaintiff and the RTS proceedings in favour of the present appellants were decided during the pendency of the second appeal, these documents would support his submissions that the original title documents at Exhibits 65 and 66 were accepted in the proceedings of regrant and RTS proceedings in favour of the appellants. Hence, the appellant's contention that the documents at Exhibit 65 and 66 conferred title on

the plaintiff's grandfather and the appellants' title therefore stands confirmed. Hence, learned counsel for the appellants submitted that the appellants be permitted to produce all the documents annexed to the interim application by way of additional evidence. The question of law must be answered in favour of the appellants (plaintiffs), and the suit be decreed.

SUBMISSIONS ON BEHALF OF THE RESPONDENT (DEFENDANT) :

26) Learned counsel for the respondent submitted that the orders passed by the revenue authorities are always subject to the proceedings pending before the civil court. Hence, subsequent orders passed by the revenue authorities would not be of any relevance in deciding the plaintiff's title. In the absence of any supporting pleadings, no purpose would be served by permitting the additional documents in evidence. In the dates and events referred to by the learned counsel for the appellants, an important date, 10th November 1952, is not mentioned. He submits that the auction conducted on 10th November 1952 divested the plaintiff's grandfather of the title based on the documents at Exhibits 65 and 66. The sale deed at Exhibit 66 cannot be held as a valid document of title as it was executed after the date of the auction. On 10th November 1952, after

the auction was concluded, the suit land vested in the government. Hence, the sale deed dated 17th March 1953 at Exhibit 66 would not confer any title in favour of the plaintiff's grandfather. Hence, the defendant is entitled to the order of regrant. Even otherwise, there is no sufficient material to show that Krishna was the absolute owner of the suit property, and that the plaintiff was in possession of the entire suit property.

27) Learned counsel for the respondent referred to the findings recorded in the revenue proceedings and Section 220 of the Maharashtra Land Revenue Code ('**MLRC**'). He submits that, in view of Section 220 of the MLRC, the orders passed by the revenue authorities and the findings in the said proceedings would not be of any relevance in view of the vesting of the suit property in the name of the government pursuant to the auction conducted in the year 1952. Learned counsel for the respondent further relied upon certain admissions given by the original plaintiff with reference to the possession. He submits that the perusal of the oral evidence would indicate that the plaintiff was never in possession of the suit property.

28) The Tagai loan availed by the defendant's grandfather was under the provisions of the Land Improvement Loans Act, 1883. The

amount was repaid by the defendant. Hence, he would be entitled to the order of regrant. In view of the auction conducted for non-payment of the Tagai loan, the land vested in the government. Hence, in the absence of any declaration prayed by the plaintiff that the subsequent mutation entries are legal and valid, the plaintiff would not be entitled to a declaration of title based on the document executed after the auction was concluded.

29) In view of these facts, of the auction concluded in 1952, and the land vested in the government, the entire evidence relied upon by the learned counsel for the appellants is beyond the pleadings. Hence, none of the evidence relied upon by the plaintiff in the original proceedings and by way of additional documents would be of any assistance to support his submissions that the title vested in the plaintiff's grandfather. To support his submissions, learned counsel for the respondent relied upon the decision of the Hon'ble Apex Court in ***Shivaji Balaram Haibatti Vs. Avinash Maruthi Pawar*[1].** He submits that any findings recorded on the evidence dehors the pleadings would be without jurisdiction. Hence, the documents relied upon by the learned counsel for the appellants would not be of any assistance in the absence of any supporting pleadings.

1 (2018) 11 SCC 652

ANALYSIS :

30) I have carefully perused the entire proceedings, including the pleadings and evidence on record. The submissions made by the learned counsel for the appellants regarding the joint purchase of Survey No. 178/2 by Krishna and Jijaba are not supported by pleadings. The sale deed dated 18th August 1938 in the name of Krishna and Jijaba is produced at Exhibit 65. Rather, the plaintiff pleaded in the plaint that the suit property was originally owned by the defendant’s grandfather, namely Mahadu. It is contended by the defendant that in the partition of 1941, Survey No. 178/2 was allotted to the share of Jijaba. This theory of partition finds support in Mutation Entry No. 6606 at Exhibit 95A. Both courts have believed in the partition theory.

31) The subsequent sale deed of 4th July 1947 by Jijaba, executed in respect of 36.5 gunthas in favour of Krishna, is not in dispute, but the document is not on record. However, the sale deed was given effect in the record of rights. After the sale deed of 4th July 1947, by Jijaba in favour of Krishna, Survey No. 178/2 was subdivided, and Survey No. 178/2A was entered in the name of Krishna and Survey No. 178/2B was entered in the name of Jijaba. Therefore, there cannot be any manner of doubt that Survey No.

178/2B remained with Jijaba.

32) The record shows that without payment of the Tagai loan, Jijaba expired on 23rd February 1949, and that the loan availed by Jijaba was admittedly taken after he had executed the sale deed dated 4th July 1947. Even the revenue entries produced on record show that the endorsement of the loan was made in respect of Survey No. 178/2B. The defendant denies Krisha's title on the ground that, due to non-payment of the Tagai loan, an auction was conducted and the land vested in the government. There appears to be no dispute that there was an entry in the revenue record that Jijaba had availed a Tagai loan on 22nd August 1947. However, it appears that Mutation Entry No. 7379 was recorded thereafter on 12th November 1947 to record the execution of the sale deed dated 4th July 1947. As per the said mutation entry, Survey No. 178/2A was recorded in the name of Krishna. Therefore, availing a loan by Jijaba after executing the sale deed in favour of Krishna for 36.5 gunthas out of Survey No. 178/2 would not affect Krishna’s title on Survey No. 178/2A.

33) There is also no dispute that by the sale deed dated 13th March 1949, Mahadu, i.e. the son of Jijaba, purchased Survey No. 178/2A from Krishna. The said sale deed was recorded in the record of rights vide Mutation Entry No. 7824, produced at Exhibit 89.

Though the document of sale is not produced on record, a copy of the Index-II is produced at Exhibit 85. Thus, Mahadu, i.e. the grandfather of the defendant, purchased land at Survey No. 178/2A from Krishna.

34) Therefore, even if the sale deed at Exhibit 65, for Survey No. 178/2, is jointly in the name of Krishna, that is, the grandfather of the plaintiff and Jijaba, that is, the great-grandfather of the defendant, there is nothing on record to show the extent of Krishna's and Jijaba's ownership pursuant to the sale deed at Exhibit 65. However, Mutation Entry No. 7379 at Exhibit 88 records the sub-division of Survey No. 178/2 to give effect to the sale deed dated 4th July 1947, executed by Jijaba in favour of Krishna for 36.5 gunthas out of Survey No. 178/2. The sub-division of Survey No. 178/2 is recorded in Mutation Entry No. 7379 by recording Survey No. 178/2A in the name of Krishna and Survey No. 178/2B in the name of Jijaba. Therefore, the sale deed at Exhibit 65 read with Mutation Entry No. 7379 at Exhibit 88 shows that when Jijaba sold 36.5 gunthas to Krishna out of Survey No. 178/2, he retained the remaining 36.5 gunthas. Thus, Krishna was the owner of Survey No. 178/2A, and Jijaba was the owner of Survey No. 178/2B.

35) Thus, the concurrent finding recorded by both courts accepting the defendant’s theory of 1941 partition that Survey No. 178/2 was allotted to the share of Jijaba, is more probable, as it also

finds support in the undisputed sale deed dated 4th July 1947 executed by Jijaba in favour of Krishna, as evidenced by Mutation Entry No. 7379, at Exhibit 88 showing that Krishna was owner of Survey No. 178/2A. This fact is further confirmed by the subsequent sale deed dated 13th March 1949, executed by Krishna as owner in favour of Mahadu for Survey No. 178/2A, as evidenced by Mutation Entry No. 7824 at Exhibit 89 and Index II at Exhibit 85. Even the Sale Deed dated 17th March 1953 at Exhibit 66 by Mahadu in favour of Krishna for Survey No. 178/2A supports this fact. Even otherwise, the plaintiff has not pleaded ownership in respect of Survey No. 178/2B, and in fact, he has pleaded that the suit property was owned by Mahadu.

36) Thus, the aforesaid sequence of transactions and the relevant revenue record show that half of the suit property was sold by Jijaba to Krishna and was repurchased by Jijaba's son, i.e., Mahadu (defendant’s grandfather), from Krishna. Thereafter, the land repurchased by Mahadu was again sold to Krishna on 17th March 1953, which is the document at Exhibit 66. This sale deed at Exhibit 66 records that Survey No. 178/2A, admeasuring 36.5 gunthas, is sold by Mahadu to Krishna. Therefore, there is sufficient evidence that Survey No. 178/2A was owned by Krishna and Survey No.

178/2B was always owned by Jijaba and then by his son, Mahadu.

37) On the execution of the sale deed dated 13th March 1949, as seen from Mutation Entry No. 7824, Exhibit 89 and Index II at Exhibit 85, the ownership of Survey No. 178/2A was transferred from Krishna to Mahadu. Therefore, Survey No. 178/2B was already with Jijaba, and even Survey No. 178/2A went to the branch of Jijaba, which conferred absolute ownership of Survey No, 178/2 to the defendant's family, that is to Mahadu, grandfather of the defendant and son of Jijaba, till the sale deed dated 17th March 1953 was executed by Mahadu in favour of Krishna.

38) By sale deed dated 17th March 1953, Exhibit 66, though Survey No. 178/2A was again transferred to Krishna, that is, the plaintiff's grandfather, the ownership of Survey No. 178/2B always remained with Jijaba's branch. Therefore, the defendant's family, that is, Jijaba and Mahadu, were never divested of the title of Survey No. 178/2B, that is, half of the suit property. The revenue record shows that in 1954, the auction process was completed and Survey Nos. 178/2A and 178/2B were entered in the name of the government, as the Tagai loan was not repaid. There is no dispute that in the consolidation scheme, Survey Nos. 178/2A and 178/2B were allotted Gat No. 952. In the revenue record of Form 'B' at Exhibit 84 and the

7/12 extract at Exhibits 58, 59, 60, 61, 62, 63 and 64, show the name of the government in respect of Survey No. 178/2 and Gat No. 952. Interestingly, the entry of the loan is seen only in respect of Survey No. 178/2B.

39) However, the material on record shows the status of Survey Nos. 178/2A and 178/2B, after they were consolidated as Gat No. 952 in the government's name under the consolidation scheme. With reference to the Tagai loan endorsed in the revenue record, the order was passed on 7th August 1954 by the learned Collector for taking over possession by auction for default in payment of the Tagai loan.

40) The record shows that, pursuant to the applications at Exhibits 73 and 74, submitted by Krishna and Shivram, respectively, the government granted a lease by issuing sanad (Kabuliyat) produced at Exhibits 69 and 71 to cultivate Survey Nos. 178/2A and Survey No. 178/2B. The defendant’s father, Dnyanoba’s statement, recorded that he had no objection if the suit land was regranted to the sons of Krishna. The statement is produced at Exhibit 77. In 1992, the application for regrant was approved, and Mutation Entry No. 4251, dated 15th May 1992, was effected by entering the defendant's name in the revenue record. According to the plaintiff, based on the said mutation entry, the defendant tried to disturb the plaintiff’s

possession. Hence, the suit was filed.

41) The plaintiff prayed for a declaration that the defendant has no right, title, or interest in the suit property and an injunction to protect the plaintiff's possession in respect of Gat No. 952 that comprises Survey Nos. 178A and 178B. It is therefore necessary to peruse the orders passed by the revenue authorities annexed to the Interim Application to find out whether they need to be taken on record as additional evidence.

42) The revenue authorities have held that the order in favour of the defendant was not of regrant but was an order of restoration under Section 220 of the MLRC. It is further held that proceedings for auction were conducted due to non-payment of the loan; however, when the lands, that is, Survey Nos. 178/2A and 178/2B were put to auction; no one came forward to bid; therefore, the government made a nominal bid. Before confirmation of the auction sale, lands were sold to Krishna by the defaulter in 1953, and accordingly, Krishna's name was entered in the record of rights by Mutation Entry Nos. 9967 and 10164. It is further recorded that the defendant's father had admitted in his statement dated 18th September 1969 that Survey Nos. 178/2A, 178/2B and 178/5 have been sold to Krishna, and it may be regranted to his sons and that he may be regranted Survey

No. 182/4. Therefore, in view of the mutation entries and the statement made by the defendant's father, the suit property, that is, Survey Nos. 178/2A, 178/B, and another Survey No. 178/5 consolidated into Gat Nos. 952 and 948 were held to be in Krishna's possession. The learned Additional Collector, by Judgment and Order dated 21st September 1992, allowed RTS Appeal No. 90 of 1992 filed by the plaintiff to challenge the order dated 8th April 1992 in favour of the defendant and accordingly ordered that Gat Nos. 952 and 948 be restored to Ranganath, i.e., the present plaintiff.

43) The defendant, that is, Maruti, had challenged the said order dated 21st September 1992, before the Additional Commissioner by filing RTS Appeal No. 156 of 1992, which was partly allowed on 14th January 1995, and the matter was remanded to the SDO to conduct a fresh enquiry. After remand, the learned SDO, by order dated 21st June 1997, confirmed the order in favour of the plaintiff for restoration of Gat Nos. 952, i.e. the suit property and Gat No. 948. The RTS Appeal No. 152/1997 preferred against the said order was partly allowed by the learned Collector, on 29th November 2001, and the matter was again remanded to SDO. The learned SDO, by order dated 14th June 2010, remanded the matter to the learned Tahsildar. Upon remand, the learned Tahsildar passed an order dated 6th

September 2014 in favour of the plaintiff, confirming the original order restoring the suit property in favour of the present plaintiff. A further challenge by the defendant failed when his RTS Appeal No. 470/2014 was dismissed by the learned SDO on 4th September 2015. From the documents annexed to the interim application, it appears that the defendant's challenge to the entries in the record of rights in the name of the plaintiff and subsequently in the name of the present appellants failed.

CONCLUSIONS:

44) It is also necessary to refer to the plaintiffs' pleadings, where he states that Survey Nos. 178/2A and 178/2B were owned by the defendant's grandfather, i.e. Mahadu and the plaintiff's grandfather, Krishna, had purchased Survey No. 178/2A from Mahadu. Thus, the plaintiff pleaded only the sale deed at Exhibit 66, that is, the sale deed dated 17th March 1953 executed by Mahadu in favour of Krishna, as a source of title of Krishna in respect of 36.5 gunthas of Survey No. 178/2A and not through the first sale deed dated 18th August 1938, at Exhibit 65. The plaintiff seeks a declaration of ownership of Gat No. 952, which comprises Survey No. 178/2A and Survey No. 178/2B; however, even according to the pleadings and evidence of the plaintiff, his source of title to Survey No. 178/2B is not

shown. Therefore, it is difficult to accept the arguments of learned counsel for the appellants that the sale deeds at Exhibits 65 and 66 would confer absolute ownership on Krishna in respect of the entire Gat No. 952. However, in view of the vesting of title in Krishna by the sale deed dated 4th July 1947 evidenced by Mutation Entry No. 7379, at Exhibit 88 in respect of Survey No. 178/2A before the order of auction in the year 1954, it would not divest Krishna of his ownership of Survey No. 178/2A admeasuring 36.5 gunthas. The subsequent sale deed dated 13th March 1949 by Krishna in favour of Mahadu, evidenced by Mutation Entry No. 7824, at Exhibit 89 and Index II at Exhibit 85, read with the sale deed dated 17th March 1953 at Exhibit 66 by Mahadu in favour of Krishna, shows that the title of Survey No. 178/2A admeasuring 36.5 Ares vested with Krishna.

45) The sale deed dated 18th August 1938, at Exhibit 65, in the joint names of Jijaba and Krishna, does not specify the extent of their independent ownership. However, in view of the findings that Survey No. 178/2 was allotted to Jijaba in the 1941 partition, the subsequent sale deed in respect of 36.5 gunthas in favour of Krishna, read with the subdivision of Survey No. 178/2, allotting Survey No. 178/2A admeasuring 36.5 gunthas to Krishna and Survey No. 178/2B admeasuring 36.5 gunthas to Jijaba, it is clear that the title to the 36.5

gunthas out of Survey No. 178/2, i.e. Survey No. 178/2B, was always retained with Jijaba.

46) On perusal of the aforesaid orders passed by the Revenue Authorities annexed to the Interim Application, it is seen that defendant's father's statement dated 18th September 1969 and Mutation Entry Nos. 9967 and 10164 are relied upon. It is held that by Mutation No. 277, the regrant order in the name of the opponents was recorded. The names of the opponents in the revenue proceedings are Rangnath Shivaram Medankar, Baban Rambhau Medankar and Pandurang Rambhau Medankar. Rangnath Shivaram Medankar is the present plaintiff; however, the other opponents are not parties to the present proceedings. By the aforesaid last order dated 6th September 2014, passed by the learned Tahsildar and confirmed by the learned SDO on 4th September 2015, the orders are in favour of the opponents therein, restoring Gat Nos. 952 and 948, now numbered as Gat Nos. 50 and 54. It is also recorded that the orders are passed under Section 220 of the MLRC. Thus, these orders are not exclusively in the name of the plaintiff.

47) In the decision of ***Shivaji Balaram Haibatti*** relied upon by the learned counsel for the respondent, the Apex Court held that the parties to the suit cannot travel beyond the pleadings; so also the

court cannot record any finding on the issues which are not part of the pleadings and that any finding recorded on an issue *dehors* the pleadings is without jurisdiction. In the present case, the plaintiff has neither pleaded any source of title to Survey No. 178/2B and the entire Gat No. 952 nor pleaded any exclusive right flowing from the orders passed under Section 220 of MLRC. Therefore, considering the plaintiff's pleadings, no purpose would be served by permitting the copies of the orders annexed to the interim application pertaining to Survey Nos. 178/2A and 178/2B along with the other survey numbers and Consolidated Gat Nos. 952 and 948, to be produced as additional evidence.

48) The Interim Application is therefore dismissed.

49) Hence, the question of law framed in the second appeal is accordingly answered as follows:

"So far as the title is concerned, the documents on record, i.e. Exhibits 65 and 66, read with the other evidence as discussed in the above paragraphs, show that Survey No. 178/2A admeasuring 36.5 gunthas was owned by Krishna and Survey No. 178/2B admeasuring 36.5 gunthas was owned by Jijaba and thereafter by Mahadu. However, the said survey numbers were consolidated in Gat No. 952

and recorded in the name of the government. In view of the findings on the title and possession in respect of Survey Nos. 178/2A and 178/2B, no declaration can be granted that the defendant is not at all concerned with Gat No. 952. There is no clarity on the actual physical possession of the suit property, that is, Gat No. 952. The suit is filed with a prayer to declare that the defendant, who is Mahadu's grandson, has no right, title, or interest in the suit property. The suit property is described as Survey Nos. 178/2A and 178/2B, original Survey No. 178/2 consolidated as Gat No. 952 admeasuring 73 Ares(gunthas). In view of the title documents in respect of Survey Nos. 178/2A and 178/2B, and original Survey No. 178/2, as discussed in the above paragraphs, it cannot be said that the defendant would have no right, title, or interest of whatsoever nature or not at all concerned with Survey No. 178/2B and Gat No. 952. Hence, the declaration prayed for in the present suit cannot be granted. In the absence of sufficient pleadings supported by satisfactory evidence, the declaration and injunction in respect of possession also cannot be granted. Therefore, there is no perversity in the findings recorded in the impugned judgments warranting any interference in this second appeal, subject to the aforesaid clarificatory findings. Hence, no interference is warranted in the impugned decrees dismissing the suit."

50) In view of the aforesaid findings on title to Survey Nos. 178/2A and 178/2B, it is clarified that the concerned parties would be at liberty to adopt appropriate proceedings as permissible in law for appropriate reliefs in respect of their respective rights through Krishna and/or Jijaba and Mahadu, and for separate possession in Gat No. 952, including applying for partition and separate possession. If any such proceedings are initiated, the issue of joinder of the necessary parties from the branches of Krishna, Jijaba, and Mahadu is kept open, as no adjudication on who are the heirs and legal representatives of Krishna, Jijaba and Mahadu has been undertaken in these proceedings.

51) The second appeal is therefore dismissed subject to the aforesaid clarification.

(GAURI GODSE, J.)