

(2014) 12 BOM CK 0148
In the Bombay High Court
Case No : Second Appeal No. 391 of 2010

Sitaram

APPELLANT

Vs

Sow. Kaveribai

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43(1), 43(2), 84C
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 24, Order 41 Rule 31, 100, 103
Maharashtra Land Revenue Code, 1966 — Section 149
Registration Act, 1908 — Section 23, 24, 25, 26, 30
Transfer of Property Act, 1882 — Section 3, 53(A)

Citation : (2015) 1 ABR 677 : (2015) 6 BomCR 690 : (2015) 3 MhLj 236

Hon'ble Judges : R.G. Ketkar, J

Bench : Single Bench

Advocate : R.R. Mantri i/b Swapnil S. Patil, Advocate for the Appellant; Younus B. Pathan, Advocate for the Respondent

Judgement

R.G. Ketkar, J.—Heard Mr. R.R. Mantri, learned counsel for the appellants, Mr. Younus B. Pathan, learned counsel for respondent No. 1, Mr. S.P. Dound, learned Assistant Govt. Pleader for respondent No. 2-State and Mr. V.I. Thole, learned counsel for respondents No. 3 to 5 at length.

2. By this Appeal, u/s. 100 of the Code of Civil Procedure, 1908 (for short, "C.P.C."), original plaintiffs have challenged the Judgment and decree dated 16/02/2010 passed by the learned District Judge-2, Aurangabad in R.C.A. No. 49 of 2009. By that order, learned District Judge allowed the Appeal preferred by original defendants No. 3 to 5 and quashed and set aside the Judgment and decree dated 23/02/2009 passed by the learned 2nd Jt. Civil Judge, Senior Division, Aurangabad in R.C.S. No. 202/2002. The learned District Judge dismissed the Suit. The parties shall herein after be referred to as per their status in the trial Court. The facts and circumstances giving rise to filing of the present Appeal, briefly, stated are as below.

3. The appellants instituted R.C.S. No. 202/2002 in the Court of the Civil Judge,

Senior Division, Aurangabad for (1) declaration that they are owners and in possession of land bearing G. No. 555 admeasuring 2 H. 39 R. situate at Verul Tanda, Taluka Khultabad, District Aurangabad (for short, " suit land "); (2) direction to the Tahsildar, Khultabad to take proper entries of ownership, possession and tilling of land on mutation record, 7/12 extracts and all other necessary records of the suit land in the names of the plaintiffs, who are legal representatives of late Gobarya Chavan; (3) setting aside the illegal entries made in the name of defendant No. 1 Kaveribai Dasu Rathod in revenue record and (4) setting aside forged sale deed dated 10/02/1977 in favour of Kaveribai Dasu Rathod by declaring the same as illegal and improper; (5) setting aside the illegal entries made in revenue and land record in the name of (a) Bhausahab Kadam, (b) Kripalsingh Bajwa; (c) Surendrasingh Bajwa (defendants No. 3 to 5) and (d) Sandeep Bodkhe and/or any other person on the basis of illegal entries and alienated only on paper and all subsequent sale deeds in favour of defendants be declared illegal, improper, unjust and the same may be quashed and set aside; (6) declaration that the Judgment in proceeding No. 2001/Jama/1/KV/1281 is null and void and not binding upon the plaintiffs; (7) issuing injunction restraining the defendants from interfering with the possession of the plaintiffs over the suit land.

4. It is the case of the plaintiffs that their father Gobarya Chavan was owner and in possession of the suit land as a protected tenant and was declared as owner for more than 50 years back. He was also in possession of the suit land on the basis of Isar pawti executed by previous owner Hiralal. In the year 1982-83, during the implementation of the consolidation scheme, S. No. 246/1, 246/2 and 246/3 were converted into G. No. 555 i.e. suit land. Till the year 1981-82, name of Gobarya Chavan appeared in record of rights of these survey numbers. During the course of consolidation scheme, his name was deleted from ownership column and name of defendant No. 1 Kaveribai Dasu Rathod was entered vide Mutation Entry No. 43 in respect of area admeasuring 1 H. 8 R. The name of Gobarya Chavan was entered in the other rights column. Defendant No. 1 Kaveribai Dasu Rathod has no right, title and interest in the suit land. She was also not in possession of the suit land. Gobarya Chavan died on 23/10/2000. The plaintiffs are legal representatives of deceased Gobarya Chavan. Defendant No. 1 Kaveribai @ Kalawatibai executed sale deeds in favour of defendants No. 3 to 5 and other persons. Plaintiff No. 7 Madan Chavan made several representations to the Tahsildar, Khultabad against the entries made in the name of Kaveribai and other persons on the basis of these sale deeds. The sale deed dated 10/02/1977 in favour of defendant No. 1 Kaveribai is forged and fabricated document. The name of Kaveribai was entered in the revenue record in the year 1982-83 on the basis of forged sale deed by Mutation Entry No. 1. The sale deed was, however, registered on 07/06/1985. The entry made by revenue authorities in the name of Kaveribai is illegal. There was dispute in respect of way among different land owners adjacent to the suit land. On 17/01/2002, Tahsildar, Khultabad passed order in proceeding No. 2001/Jama/1/KV/1281 to the effect that eastern side of

the suit land be used as a way on the basis of consent given by defendant No. 1 Kaveribai. The said order is bad in law and is not binding upon the plaintiffs. The name of defendant No. 1 Kaveribai is wrongly mutated during consolidation scheme in the record of rights. The plaintiffs, therefore, instituted Suit for the aforesaid relief"s.

5. Defendant No. 1 Kaveribai resisted Suit by filing Written Statement at Exh. 18 contending inter alia that Gobarya Chavan was owner of land bearing S. No. 245/1 and Dhanji Pandu, cousin of Gobarya Chavan was owner of land S. No. 246/2. They executed sale deed in her favour on 10/02/1977. After registration of the sale deed, both survey numbers were consolidated into G. No. 555. Her name was recorded in the consolidation scheme. It appeared consistently in the record of rights of the suit land. She had sold 1 H. 21 R. out of the suit land in favour of Shankar Mahadu Koli under registered sale deed. After death of Shankar Koli, name of his widow Satyabhamabai was recorded in the revenue record by Mutation Entry No. 1228. After her death, names of her legal representatives were recorded by Mutation Entry No. 1237. Excluding that portion, defendant No. 1 Kaveribai is in possession of the suit land. During his life time, Gobarya Chavan has instituted Suit against her, but the same was dismissed in default.

6. Defendant No. 2-Tahsildar though was duly served, failed to appear. The Suit, therefore, proceeded ex parte against defendant No. 2. Defendants No. 3 to 5 filed their Written Statement at Exh. 89 contending inter alia that the Suit is barred by limitation. Defendant No. 1 executed registered sale deed on 23/08/2002 to the extent of 3 Acres for the consideration of Rs. 1,60,000/- [Rupees One Lac Sixty Thousand only] in favour of defendant No. 3. On the same day, defendants No. 4 and 5 jointly purchased 2 Acres 19 gunthas out of the suit land for the consideration of Rs. 1,40,000/- [Rupees One Lac Forty Thousand only]. Defendant No. 3 sold the land purchased by him to one Sandeep Asaram Bodkhe. The defendants denied that the plaintiffs were ever in possession of the suit land and that the sale deed executed by Gobarya Chavan in favour of defendant No. 1 is a bogus and fabricated document. The name of Gobarya Chavan was rightly deleted during the implementation of consolidation scheme.

7. On the basis of the pleadings of the parties, learned trial Judge framed the necessary Issues at Exh. 18. The parties adduced oral as well as documentary evidence. After considering the evidence on record, learned trial Judge partly decreed the Suit on 23/02/2009. The learned trial Judge declared that the plaintiffs are owners and possessors of the suit land; that the alleged sale deed dated 10/02/1977 of defendant No. 1 and subsequent sale deeds of the defendants are illegal, null and void and not binding upon the plaintiffs and issued injunction restraining the defendants from interfering in possession of the plaintiffs over the suit land.

8. Aggrieved by that decision, defendants No. 3 to 5 preferred Appeal before the

District Court, Aurangabad. The learned District Judge held that the Suit is barred by limitation; that the plaintiffs failed to prove that they are owners and in possession of the suit land; that the plaintiffs failed to prove that the sale deed in the name of defendant No. 1 Kaveribai is forged and fabricated. Consistent with these findings, the learned District Judge allowed the Appeal and dismissed the Suit. It is against this decision, plaintiffs have instituted present Appeal u/s. 100 of C.P.C.

9. The Appeal was heard for admission on 12/09/2011. After hearing both sides, this Court dismissed Appeal on 12/09/2011 at admission stage. Aggrieved by this order, plaintiffs approached the Apex Court. By order dated 30/01/2013, Apex Court allowed Civil Appeal No. 821 of 2013 and set aside this Court's order and remitted the matter for reconsidering afresh and dispose of the same in accordance with law within a period of three months from the date of communication of the order. While allowing the Appeal, it was also made clear that the Court has not expressed any opinion on the merits of the case. The Court also directed the parties to maintain status-quo till disposal of the Second Appeal by the High Court.

10. Before the Apex Court, the counsel for the plaintiffs submitted that he will re-frame the substantial questions of law in a precise manner, which will be clearly based on the grounds already taken as grounds No. 2, 4, 5, 8 and 13 of the Appeal memo. In pursuance thereof, plaintiffs have amended the Appeal memo. The matter was thereafter heard on 10/11/2014 when the following substantial questions of law were framed:

(i) Whether the point of limitation decided by the lower appellate Court under Article 58 of the Limitation Act can be sustained?

(ii) Whether the sale deed dated 10/02/1977 is legal and valid in view of Section 50-B of Hyderabad Tenancy and Agricultural Lands Act, 1950?

(iii) Whether the adjudication of lower appellate Court on the point of possession in favour of defendants is perverse in view of the mutation entries and the report of Tahsildar produced on record?

(iv) Whether the learned District Judge was justified in not discussing the provisions of Maharashtra Land Revenue Code, 1966 and in particular section 149 thereof as also Registration Act, 1908?

11. In view thereof, Second Appeal is admitted on the above substantial questions law. The learned counsel for the respective respondents waive service. At the request and by consent of the parties, as also in view of the Apex Court Order dated 30/01/2013, Appeal is taken up for final hearing.

12. In support of this Appeal, Mr. Mantri raised following contentions:

(I) Original sale deed dated 10/02/1977 did not see the light of the day. No permission was obtained by the defendants for leading secondary evidence. The

learned trial Judge had rightly drawn adverse inference against defendant No. 1;

(II) Though the sale deed is alleged to have been executed by Gobarya Chavan in favour of defendant No. 1 Kaveribai on 10/02/1977, it was registered on 07/06/1985. Mr. Mantri relied upon Sections 23, 25, 34, 74 to 77 of the Indian Registration Act, 1908. He submitted that the sale deed was not registered within the time stipulated in the Registration Act, 1908. It is, therefore, a void transaction;

(III) Defendant No. 1 Kaveribai did not enter the witness box and consequently the sale deed dated 10/02/1977 at Exh. 101 is not proved;

(IV) On 07/01/1958 Gobarya Chavan became owner of the suit land u/s. 38E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short, " Tenancy Act "). His name appeared in the relevant revenue record up to 1981. After 1981, his name was deleted and name of defendant No. 1 Kaveribai is entered. U/ s. 50B(1) of the Tenancy Act, without previous sanction of the Collector, any land purchased by tenant u/s. 38E can not be transferred by sale, gift, exchange, mortgage, lease or assignment. Any transfer in contravention of sub section (1) is null and void. In the present case, before executing sale deed on 10/02/1977 sanction of the Collector was not obtained;

(V) Section 98C of the Tenancy Act provides for disposal of land, alienation of which is invalid. Since the sell is void, Civil Court has jurisdiction to entertain and try the Suit;

(VI) The learned District Judge committed error in holding that the Suit is barred by limitation in view of Article 58 of the Limitation Act, 1963. He submitted that in the facts and circumstances of the case, Article 65 is applicable and not Article 58. Article 65 of the Limitation Act provides that for possession of immovable property or any interest therein based on title, period of limitation is 12 years and time from which period begins to run is when the possession of the defendant becomes adverse to the plaintiff. In the present case, defendants have not set up plea of adverse possession and, therefore, it can not be said that the Suit is barred by limitation. In fact, defendants did not take up plea that the Suit is barred by limitation before the trial Court and for the first time this plea was taken up before the District Court. Initially, Gobarya Chavan has instituted R.C.S. No. 852/1986 against defendant No. 1 Kaveribai for injunction. The Suit was dismissed in default on 02/08/1991. A fresh cause of action accrued to the plaintiffs as the adjacent land owners started asserting right of way. The Tahsildar, Khultabad passed order on 17/01/2002 and based on this cause of action, present Suit is instituted. The Suit is, therefore, not barred by limitation;

(VII) The plaintiffs are in possession as is evident from voluminous documentary evidence on record which is considered in detail by the trial Judge in paragraph 14. However, learned District Judge has not discussed this evidence at all. The District Court being the last fact finding Court, ought to have considered this evidence and given finding as to who is in possession. In support of these

submissions, Mr. Mantri relied upon following decisions:

(a) Raj Kumar Dey and Others Vs. Tarapada Dey and Others, thereof to contend that if the document is registered beyond the period stipulated in Sections 23 and 25 of the Registration Act, 1908, the registration would be void;

(b) Bhimrao Bhosale and Others Vs. Ankush Khadke and Others, thereof to contend that in the present case, plaintiffs have sought relief of declaration that the sale deed dated 10/02/1977 is null and void and that the said sale deed is not binding upon them. The sale deed is also a forged and fabricated document. The said Issues could not have been agitated or gone into under the provisions of Section 98C of the Tenancy Act and Civil Court has jurisdiction to entertain and try the Suit;

(c) Sukumabai Vs. Chandgonda Kalgonda Patil, to contend that since the transaction dated 10/02/1977 is ex-facie illegal and invalid as there was no previous sanction of Collector before the execution of sale deed, it was not necessary for Civil Court to refer the matter to the tenancy authorities. In other words, Civil Court has requisite jurisdiction to entertain and try the Suit;

(d) Himatrao Ukha Mali and others Vs. Popat Devram Patil and another, to contend that the sale deed dated 10/02/1977 without obtaining previous sanction of Collector is invalid;

(e) Dnyanoba Sukhdeo Lande and Another Vs. Shrirang Mahataraji Dhurwade, to contend that the transfer which is invalid can not give protection u/s. 53(A) of the Transfer of Property Act, 1882;

(f) State of Maharashtra Vs. Pravin Jethalal Kamdar (Dead) by Lrs., to contend that since the sale deed dated 10/02/1977 is void, it was not necessary to pray for declaration that it is null and void. The Suit will be governed by Article 65 and not by Article 58 of the Limitation Act.

(g) Rameshwar Gopikishan Toshniwal Vs. Sakhubai Gaikwad died through L.Rs., to contend that sale deed hit by section 50B is rendered void.

13. On the other hand, Mr. V.I. Thole supported the impugned order. He submitted that initially plaintiffs instituted Suit in the year 2002 only against defendant No. 1 Kaveribai and defendant No. 2 Tahsildar. Defendant No. 1 Kaveribai had sold suit land to defendants No. 3 to 5. They were thereafter impleaded and filed Written Statement. However, subsequently they were deleted. Defendant No. 1 Kaveribai did not contest the Suit. After considering the evidence, trial Court decreed the Suit on 13/08/2004. Defendants No. 3 to 5 filed R.C.A. No. 234 of 2004 which was allowed on 06/01/2005. The trial Court's decree was set aside and Suit was restored with a direction to implead defendants No. 3 to 5. He raised following contentions

(1) The sale deed was executed by Gobarya Chavan in favour of defendant No. 1 Kaveribai on 10/02/1977 and the same was presented for registration within the

stipulated period in the year 1977 itself but the same was registered in the year 1985. After presenting the document before the Sub Registrar for its registration and if said document is registered subsequently, it does not invalidate execution of the sale deed. As per Section 47 of the Registration Act, 1908, a registered document operates from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. In other words, though the sale deed is registered in the year 1985, it operates from the date of the execution i.e. on 10/02/1977. He further submitted that Section 34 of the Registration Act is not applicable;

(2) P.W. 1 Madan admitted execution of sale deed dated 10/02/1977. Defendant No. 1 Kaveribai was in custody of original sale deed. She did not contest the Suit. Defendants No. 3 to 5 have produced certified copy of the sale deed and also examined D.W. 2 Vasant Narayan Jadhav at Exh. 121 who was serving as Clerk in the office of the Sub Registrar. In other words, sale deed dated 10/02/1977 at Exh. 101 was duly proved;

(3) G. No. 555 was formed out of S. No. 246/2 and 246/3 as is evident from Exh. 100 being extract of consolidation;

(4) Section 50B of the Tenancy Act provides that no land purchased by a tenant under section 38E, can be sold without the previous sanction of the Collector. Any transfer of land in contravention of sub-section (1) is invalid and not null and void. In the case of Lachmabai and Others Vs. Vithabai Namawar and Gangabai, it is held that transfer in violation of section 50B of the Tenancy Act is not null and void, but is only invalid and section 98C of the Tenancy Act lays down how land should be disposed of, alienation of which is invalid. In that section, Tahsildar suo motu on the application of any person interested in such land has reason to believe that such alienation, transfer or acquisition is or becomes invalid under any of the provisions of the Act, the Tahsildar shall issue a notice and hold inquiry as provided for in section 98-B and decide whether the alienation, transfer or acquisition is or is not invalid. It is only after declaration by Tahsildar, the land vests in the Govt. and it does not go back to the vendor or transferor. Such land is to be disposed of as per sub section (4);

(5) Suit is clearly barred by limitation as sale deed is under challenge. Article 65 of the Limitation Act is not applicable in the facts and circumstances of the present case;

(6) The learned District Judge considered evidence of Ramdas Koli, who was examined as D.W. 4 at Exh. 137 and D.W. 3 Lala Dhansing Chavan at Exh. 136. Both these witnesses deposed that defendants No. 3 to 5 are in possession. D.W. 4 Ramdas Koli deposed that adjacent to his land, there is land of defendants No. 4 and 5 (appellants No. 2 and 3 before the District Court) and they are in possession of the suit land. He submitted that Appeal is devoid of substance and no power is exercised invoking section 100 of C.P.C.

14. Mr. Yousuf B. Pathan invited my attention to the affidavit dated 26/04/2011

made by defendant No. 1 and submitted that defendant No. 1, after going through the record of R.C.S. No. 202/2002, has stated that she did not file Written Statement at Exh. 18 in the trial Court. The same is also not signed by her. She did not appoint any Advocate to defend her in that Suit. Defendant No. 1 has no interest in the suit land. Defendant No. 1 never entered into sale transaction in respect of the suit land. Gobarya Chavan did not execute the sale deed in her favour on 10/02/1977. He submitted that all these documents are required to be verified from the hand writing and finger print experts.

15. In reply, Mr. Mantri submitted that for the first time in this Appeal, defendants No. 3 to 5 have contended that G. No. 555 was formed out of S. Nos. 246/2 and 246/3 as is evident from Exh. 100, extract of consolidation scheme. He submitted that in paragraph 2-D, plaintiffs specifically asserted that in the year 1982-83 during the course of consolidation scheme, S. Nos. 246/1, 246/2 and 246/3 were converted into G. No. 555. In paragraph 3, plaintiffs gave boundaries of the suit land. Defendants No. 3 to 5 filed Written Statement dated 06/02/2006 at Exh. 89. In paragraph 15, they admitted that the contents of paragraph 2-D are correct. It was submitted that the consolidation scheme was implemented and S. Nos. 246/1, 246/2 and 246/3 were converted into G. No. 555. In paragraph 11, they admitted that the contents of paragraph 3 as regards boundaries are true and correct. He submitted that since defendants No. 3 to 5 admitted contents of paragraphs 2-D and 3, it is not open for defendants No. 3 to 5 now to contend that S. Nos. 246/2 and 246/3 were converted into G. No. 555. He further submitted that though P.W. 1 Madan admitted in cross examination that S. Nos. 246/2 and 246/3 were converted into G. No. 555, plaintiffs did not get opportunity to explain that admission. Had the opportunity been given, plaintiffs would have examined Officer from the Consolidation department. The parties may, therefore, be given opportunity to lead evidence on this aspect.

16. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record, as also original record.

17. Mr. Mantri submitted that original sale deed dated 10/02/1977 did not see light of the day. Defendants No. 3 to 5 did not produce original sale deed. They did not obtain permission for leading secondary evidence. The learned trial Judge had rightly drawn adverse inference against defendant No. 1. I do not find any merit in this submission. It has come on record that defendants No. 3 to 5 examined D.W. 2 Vasant Narayan Jadhav at Exh. 121. He was serving as a Clerk in the office of Sub Registrar. He had brought the record from the office of the Sub Registrar, Aurangabad and from record he deposed that Gobarya Chavan and Dhanji Chavan were shown as vendors and Kalavatibai Dasu Rathod as purchaser. He deposed that both the vendors have put their thumb impressions. He brought the thumb impression book along with him, which showed that Gobarya Chavan and Dhanji Chavan have impressed their thumb impressions in

the thumb impression book.

18. Defendants No. 3 to 5 also examined D.W. 3 Lala Dhansing Chavan, attesting witness of the sale deed executed by Gobarya Chavan and Dhanji Chavan in favour of defendant No. 1 Kaveribai at Exh. 136. D.W. 3 Lala is a nephew of Gobarya Chavan. He deposed that Gobarya Chavan and Dhanji Chavan had sold the land to defendant No. 1 Kaveribai for the consideration of Rs. 10,000/- [Rupees Ten Thousand only]. He was present in the Collector's office at the time of execution of the document. The stamp paper was purchased by Gobarya Chavan and the entire contents of the sale deed were narrated by Gobarya Chavan and Dhanji Chavan to the scribe of the sale deed and thereafter Gobarya Chavan and Dhanji Chavan had put their thumb impressions in his presence. D.W. 3 Lala thereafter had put his signature on the sale deed and after his signature, other witnesses signed the sale deed. The Sub Registrar obtained thumb impressions of Gobarya Chavan and Dhanji Chavan in the register. P.W. 1 Madan was shown sale deed dated 10/02/1977. He admitted that the document shown to him is a sale deed dated 10/02/1977. As noted earlier, defendant No. 1 did not contest the Suit. Defendants No. 3 to 5 produced certified copy of the sale deed at Exh. 101. P.W. 1 admitted that document shown to him is a sale deed. Witnesses examined by defendants No. 3 to 5 have proved the execution of the sale deed. For all these reasons, I do not find that the learned trial Judge was justified in drawing adverse inference against defendant No. 1 for not producing original sale deed.

19. Mr. Mantri submitted that though the sale deed is alleged to be executed on 10/02/1977, it was registered on 07/06/1985. He relied upon Sections 23, 25, 34, 74 to 77 of the Registration Act, 1908. He submitted that since the sale deed was not registered within stipulated time, it is, therefore, void transaction. In support of his submission, he relied upon the decision of the Apex Court in the case of Raj Kumar Dey (supra). Section 23 of the Registration Act lays down time for presenting documents. It lays down that subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. We are not concerned with the proviso in this case. Section 25 lays down that if owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in [India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration. Mr. Mantri submitted that in view of Section 23, document has to be presented within four months from the date of its execution and further period not exceeding four months in Section 25 subject to fulfillment of the conditions stipulated therein. Section 74 of the Registration Act lays down procedure on the application made to the Registrar in the event of the Sub Registrar refusing to register a document. Section 75 empowers the

Registrar to pass order. Section 76 provides for order of refusal by Registrar. Section 77 lays down that where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered.

20. As against this, Mr. Thole relied upon Section 47 to contend that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

21. In the present case, it has come on record that sale deed in favour defendant No. 1 Kaveribai is dated 10/02/1977. The sale deed is registered on 07/06/1985. It has come on record that the sale deed was presented before the Sub Registrar in the year 1977 itself. The learned District Judge has considered this aspect in paragraph 18 of its Judgment. After considering Section 47 of the Registration Act, learned District Judge observed that after presenting document before the Sub Registrar for its registration and if such document is registered subsequently even then it does not invalidate the execution of the sale deed. Though the sale deed is registered subsequently its effect would be from the date of its execution. Mr. Mantri relied upon the decision of the Apex Court in the case of Raj Kumar Dey (supra) and in particular paragraph 5 thereof as also following observation,

"It was held before the High Court that no registration was permissible beyond the period fixed under S. 25 read with S. 23 of the Registration Act and any registration beyond such period would be void."

After going through that Judgment, I do not find that the Apex Court has held that if the sale deed is not registered within the stipulated period, it is a void transaction. Firstly, in the present case, plaintiffs have not established that the sale deed was not presented within the time stipulated u/s. 23 or u/s. 25 of the Registration Act. Secondly, having regard to Section 47 thereof, I do not find any merit in the submission of Mr. Mantri that the sale deed is a void transaction. Even if defendant No. 1 Kaveribai did not enter into witness box, it can not be said that the sale deed dated 10/02/1977 is not proved.

22. Mr. Mantri submitted that on 07/01/1958, Gobarya Chavan become owner in view of Section 38E of the Tenancy Act. U/s. 50B(1) of the Tenancy Act no land purchased by respondent can be sold to any person without the previous sanction of the Collector. Any transfer of land in contravention of sub section (1) is null and void. He relied upon the decision of this Court in the case of (1) Sukumabai Bandu Balighate (supra), (2) Himatrao Ukha Mali (supra) and (3) State of Maharashtra (supra). Before I consider these authorities, it is necessary

to reproduce Section 50-B of the Tenancy Act.

"50B. (1) No land purchased by a tenant under sections 38, 38A, 38E, 38F, 38G, [38H or] [46D or 48], or sold to any person under section 53F, 53G, 53H, or 98C shall be transferred by sale, gift, exchange, mortgage, lease or assignment [***] without the previous sanction of the Collector.

(2) Any transfer [***] of land in contravention of sub-section (1) shall be invalid.
"

23. Perusal of Section 50B clearly shows that if land purchased by tenant u/s. 38E among other sections is sold or transferred by sale, gift, exchange, mortgage, lease or assignment without previous sanction of the Collector, such transfer is invalid. In other words, sub section (2) of section 50B does not lay down that any transfer of land in contravention of sub section (1) is null and void. In the case of Himatrao (supra), learned Single Judge of this Court also held that alienation by tenant in contravention of section 43(1) of the Bombay Tenancy and Agricultural Lands Act, 1948 was invalid u/s. 43(2) thereof. Section 43(1) and (2) are *pari materia* with section 50B(1) and (2) of the Tenancy Act. This decision however does not lay down that such transfer is null and void. In the case of Sukumabai (supra) it was urged before this Court that the question as regards validity of the sale deed should be referred to the tenancy Court u/s. 84C of the Bombay Tenancy Act and Civil Court will have no jurisdiction to entertain and try this issue. It is in that context the learned Single Judge of this Court observed that the sale deed and transaction was *ex-facie* illegal and invalid as there was no previous sanction taken by the parties before transfer of the suit land. It was not necessary for the Civil Court to once again sent the letter back for considering the sale deed. This Court has not pointedly held that the transaction in contravention of Section 43(2) was null and void. The decision, therefore, is of no assistance to the plaintiffs.

24. In the case of Rameshwar Gopikishan Toshniwal (supra), respondent before the High Court had initiated proceedings for possession of the suit land. It was her case that her husband Vithoba was the owner of S. No. 210 to the extent of 18 Acres. He had become owner in pursuance of the tenancy proceedings u/s. 38E of the Tenancy Act. He died in the year 1972. After his death, Sakhubai became owner thereof. In 1973, appellant-original defendant illegally and forcibly occupied 4 Acres 20 gunthas out of the suit land. The plaintiff demanded possession which was refused. Sakhubai, therefore, instituted Suit for recovery of possession. The appellant raised defence that Vithoba was never owner of the land. The plaintiff was not in possession at any point of time. He came out with the case that he had purchased the suit land from Vithoba through registered sale deed dated 30/05/1967. The learned trial Judge dismissed the Suit. The appellate Court held that the transaction itself was void *ab initio*. The question of acquiring any right, title or interest in the vendee Rameshwar did not arise. In view of this observation, appellate Court held that the civil Suit, to which objection was tried to be raised as not maintainable, has been held to be

maintainable for eviction of unauthorized occupant. Mr. Mantri relied upon paragraph 4 of that decision to contend that even this Court has held that transaction is null and void. Paragraph 4 of the Judgment reads as under,

"Dissatisfied with the judgment of the learned Judge of the trial Court, the lower appellate Court through Regular Civil Appeal No. 117/81. The learned Judge of the lower appellate Court reappreciated the evidence, appreciated the facts of the case, weighed the pleading of the parties before him in proper perspective and reached to the conclusion that Vithoba the husband of the plaintiff had become the owner of the land in pursuance of the provisions of section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The learned Judge of the lower appellate Court dissecting the provisions of law and relying on specific provision of section 50-B of the Hyderabad Tenancy and Agricultural Lands Act, 1950, reached to the conclusion that the same could be said to have been caught within the mischief of the provisions of this section and hence the transaction itself was as against law and no sanctity could be attached to the said document of sale deed. The learned Judge of lower appellate Court, therefore, observed that when the transaction itself was ab-initio void, the question of acquiring any right, title or interest in the property by vendee Rameshwar did not arise. In view of this specific observation by the learned Judge, the natural conclusion was that the civil suit to which an objection was tried to be raised as not maintainable has been held to be maintainable for eviction of unauthorized occupier as the possession of the appellant was not less than that of an unauthorized occupier or a person in wrongful possession. The learned Judge of the lower appellate Court, therefore, rightly held that the provisions of section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 could not be invoked in the present case and that the Civil Court could have passed the decree. Thus the natural conclusion on the basis of the above said findings was to allow the appeal by setting aside the Judgment and decree passed by the Court below. Appeal was thus allowed which is challenged in the present Second Appeal."

25. In the first place, no contention was advanced before this Court based upon Section 50B of the Tenancy Act. Secondly, it was not argued that in the absence of previous sanction of Collector, the transfer is null and void. Thirdly, no finding to that effect is recorded by this Court. This Court noted the findings recorded by the first appellate Court.

26. As against this, Mr. Thole relied upon the decision of this Court in the case of Lachmabai W/o Hanumant and others (*supra*). This Court considered Section 50B of the Tenancy Act and observed that transfer in violation of section 50B of the Tenancy Act is not null and void but only invalid. This Court reproduced section 50B in paragraphs 14. In paragraph 15, which this Court held that Section 50B of the Tenancy Act makes it clear that transfer in violation of Section 50B is not null and void, but only invalid. I, therefore, do not find any merit in the submission of Mr. Mantri that as no previous sanction of the Collector was obtained before the execution of the sale deed dated 10/02/1977, the sale deed is null and void.

27. Mr. Mantri submitted that since the sale deed is null and void, Civil Court will have jurisdiction to entertain and try the Suit and it is not necessary to initiate proceedings u/s. 98C of the Tenancy Act. I have already held that sale deed is not null and void and at the highest in view of sub section (2) of section 50B, it will be invalid. Section 98C of the Tenancy Act lays down that, where in respect of the permanent alienation, transfer or acquisition of any land made on or after the commencement of the Amending Act, 1957, the Tahsildar suo motu or on the application of any person interested in such land has reason to believe that such alienation, transfer or acquisition is or becomes invalid under any of the provisions of the Act, the Tahsildar has to issue a notice and hold inquiry as provided for in section 98B and decide whether the alienation, transfer or acquisition is or is not invalid. Sub section (2) lays down that if, after holding such inquiry, the Tahsildar comes to the conclusion that the alienation, transfer or acquisition of land is invalid, he has to make an order declaring the alienation, transfer or acquisition to be invalid. Proviso thereof lays down that where the alienation or transfer of land was made by the landholder to the tenant in possession of the land and the area of the land so alienated or transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed three family holdings, the Tahsildar shall not declare such alienation or transfer to be invalid subject to conditions (i) and (ii) stipulated therein. Sub section (3) lays down that on the declaration made by the Tahsildar under sub section (2), the land shall be deemed to vest in the State Government free from all encumbrances lawfully subsisting thereon on the date of such vesting and shall be disposed of in the manner provided in sub section (4).

28. In paragraph 16 of Lachmabai W/o Hanumant and others (supra), it is held that if the Tahsildar declares that the transaction was invalid, then the land vests in the Government and then he did not become owner. Such land is required to be disposed of as per sub section (4). In view of the provisions of Section 98C, 99 and 99-A of the Tenancy Act, in my opinion, Civil Court will have no jurisdiction to settle, decide or deal with any question which is required to be dealt with under the Tenancy Act. I have already held that even if there is no previous sanction of the Collector before execution of sale deed dated 10/02/1977, the transaction does not become null and void and at the highest it becomes invalid. In view of the provisions of sections 98C, 99 and 99A of the Tenancy Act, Civil Court will have no jurisdiction to investigate this issue. Mr. Mantri relied upon the decision of this Court in the case of Bhimrao S/o Kondiba Bhosale and others (supra) to contend that since the sale deed is null and void, Civil Court will have jurisdiction to entertain and try the Suit. In view of my finding that sale deed is not null and void, decision in the case of Bhimrao does not assist plaintiffs in any manner.

29. Mr. Mantri relied upon the decision of the Apex Court in the case of State of Maharashtra (supra) to contend that since the sale deed is null and void, it was not necessary to obtain declaration to that effect. For the reasons already indicated, I have held that sale deed is not null and void. Therefore, I do not find

any merit in the submission as well.

30. Mr. Mantri submitted that the learned District Judge committed error in holding that Suit is barred by limitation in view of Article 58. He submitted that in the facts and circumstances of the case, Article 65 is applicable. The period of limitation will begin to run when the possession of the defendant becomes adverse. The defendants did not set up plea of adverse possession and, therefore, it can not be said that the Suit is barred by limitation.

31. As noted earlier, the sale deed is executed on 10/02/1977. The plaintiffs claim that they are owners of the suit land and to that effect they are seeking declaration. They have applied for setting aside sale deed dated 10/02/1977. The learned District Judge has considered this aspect in paragraphs 11 and 12 of its Judgment. The learned District Judge considered the evidence of P.W. 1 Madan. During cross examination, he admitted that he got knowledge of the registration of the sale deed in favour of defendant No. 1 Kaveribai in the year 1986. Despite that they have instituted Suit in the year 2002. The learned District Judge, therefore, observed that plaintiffs ought to have instituted Suit for relief of declaration within 3 years as per Article 58 as right to sue first accrued to them in the year 1986.

32. Section 3 of the Transfer of Property Act, 1882 defines expression " a person is said to have notice ". It reads as under,

"Interpretation clause-In this Act, unless there is something repugnant in the subject or context,

" A person is said to have notice " of a fact when he actually knows that fact, or when but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation-Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 F(16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated;

Provided that-(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act. Explanation II-Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III-A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material;

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud. "

33. Admittedly, in the present case, the sale deed was registered on 07/06/1985. Article 58 of the Limitation Act provides for limitation of 3 years and the time from which the period begins to run when right to sue first accrues. Thus, within 3 years from 07/06/1985, plaintiffs ought to have filed Suit for setting aside the sale deed in terms of Article 58. P.W. 1 Madan admitted that he acquired knowledge about the sale deed in the year 1986. Thus, defendants No. 3 to 5 ought to have filed Suit within 3 years from 1986. Mr. Mantri submitted that Article 65 is applicable, which provides period of 12 years and the time from which period begins to run is when the possession of the defendants becomes adverse to the plaintiff. In the present case, plaintiffs are claiming to be in possession. Therefore, Article 65 of the Limitation Act is not applicable as plaintiffs have not sued for recovery of possession.

34. That apart, even if it is accepted that Article 65 is applicable, admittedly the sale deed is registered on 07/06/1985. In view of Section 3 of the Transfer of Property Act, 1882, plaintiffs can be said to have notice of the said transaction after the registration of the sale deed on 07/06/1985. In any case, P.W. 1 Madan admitted that he acquired knowledge about the sale deed in the year 1986. Defendant No. 1 is asserting her right of ownership and also started asserting that in pursuance of the sale deed, she was put in possession. Time of 12 years will, therefore, begin to run from 1986. The Suit, therefore, ought to have been filed within 12 years from 07/06/1985 or at any rate within 12 years from 1986. Admittedly, the Suit is instituted in the year 2002. I, therefore, do not find that the learned District Judge committed any error in holding that the Suit is barred by limitation.

35. Mr. Mantri submitted that the plaintiffs are in possession of the suit lands as is evident from voluminous documentary evidence on record. The learned trial Judge has considered this evidence in detail in paragraph 14. However, learned District Judge did not discuss this evidence at all. The District Court being the last fact finding Court, ought to have considered the documentary evidence as also oral evidence on record.

36. On the other hand, Mr. Thole submitted that learned District Judge has

considered the evidence of D.W. 3 Lala Chavan, who is attesting witness to the sale deed at Exh. 136 and D.W. 4 Ramdas Koli who was examined at Exh. 137. In paragraph 12, learned District Judge considered the evidence of D.W. 3 Lala Chavan and D.W. 4 Ramdas Koli, who deposed that defendants No. 3 to 5 are in possession. D.W. 4 Ramdas Koli deposed that adjacent to his land, there is land of defendants No. 4 and 5 (appellants No. 2 and 3 in the District Court) and they are in possession of the suit land.

37. Without prejudice to the above submission, Mr. Thole submitted that if the lower appellate Court has not decided the issue as to who is in possession, evidence on record is sufficient to decide the said issue and, therefore, this Court may determine the issue as to who is in possession.

38. The learned trial Judge has considered the oral as well as documentary evidence on record. In particular in paragraph 14, learned trial Judge considered following documents:

- (i) Pahani Patrak at Exh. 43 for the year 1954-55;
- (ii) 7/12 extract at Exh. 45 for the period from 1959-60 to 1981-82;
- (iii) 7/12 extract at Exh. 46 for the period from 1978-79, 1980-81 and 1981-82;
- (iv) 7/12 extract at Exh. 48 to 60 which showed the name of defendant No. 1 Kaveribai and Satyabhamabai. In other rights column, possession of Gobarya Chavan was shown.
- (v) 7/12 extract at Exh. 61 and 62 indicated name of defendants No. 1, 3 to 5 and legal representatives of Satyabhamabai. Name of defendant No. 1 was entered into ownership column of the suit land in the year 1982 and name of defendant No. 5 was entered in 7/12 extract in the year 2001-02. In other rights column, possession of Gobarya Chavan was shown;
- (vi) Certified copy of report dated 03/01/2008 at Exh. 150.

39. The learned trial Judge after considering these documents, found that plaintiffs are in possession. Perusal of the order passed by the learned District Judge however does not show that the learned District Judge has considered these documents at all. In my opinion, learned District Judge being the last fact finding Court, ought to have considered entire oral and documentary evidence on record and thereafter recorded finding. This assumes importance as plaintiffs have claimed declaration that they are in possession of the suit land. They have also claimed injunction restraining the defendants from obstructing their possession on the footing that they are in possession. It was, therefore, necessary for the District Court to have considered entire evidence before recording finding as regards possession.

40. Section 103 of C.P.C. lays down that in any second appeal, the High Court may if the evidence on record is sufficient, determine any issue necessary for the disposal of the appeal:

(a) Which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) Which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100.

41. Order XLI Rule 24 lays down that where evidence on record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issue, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

42. Perusal of Section 103 read with Order XLI Rule 24 shows that discretion is given to the Court to determine any issue for the disposal of the appeal not decided by the trial Court or first appellate Court, if the evidence on record is sufficient.

43. In the case of H. Siddiqui (dead) by L.Rs. Vs. A. Ramalingam, , the Apex Court held in paragraph 18 that it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of Order XLI Rule 31 if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. In paragraph 19, Apex Court referred to its earlier decision in B.V. Nagesh and Another Vs. H.V. Sreenivasa Murthy, , wherein it was held that the first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court. In view thereof, it will be necessary to direct the learned District Judge to record findings as to who is in possession on the basis of evidence already on record, as also whether the plaintiffs are entitled to injunction.

44. Mr. Mantri submitted that for the first time in this Appeal, defendants No. 3 to 5 have contended that G. No. 555 was formed out of S. No. 246/2 and 246/3 as is evident from Exh. 100, extract of consolidation scheme. He submitted that in paragraph No. 2-D of the plaint, plaintiffs specifically asserted that in the year

1982-83, during the course of consolidation scheme, S. No. 246/1, 246/2 and 246/3 were converted into G. No. 555. Defendants No. 3 to 5 filed Written Statement at Exh. 89. In paragraph 11 they admitted the contents of paragraph 2-D as correct. Mr. Mantri further submitted that in paragraph No. 3 of the plaint, plaintiffs gave boundaries of the suit land. In paragraph 15, defendants No. 3 to 5 admitted that the contents of paragraph 3 as regards boundaries are true and correct. Mr. Mantri submitted that once defendants No. 3 to 5 admitted the contents of paragraphs No. 2-D and 3, it is not open for them now to contend that S. Nos. 246/2 and 246/3 were converted into G. No. 555. He submitted that plaintiffs did not get opportunity to lead evidence by examining Officer from Consolidation department. As far as the so called admission given by P.W. 1 Madan during the course of cross examination, plaintiffs did not get opportunity to explain that admission.

45. Mr. Mantri submitted that learned District Judge ought to have discussed the provisions of Maharashtra Land Revenue Code, 1966 (for short, " Code ") and in particular Section 149 thereof as also Registration Act, 1908. Section 149 of Code lays down that any person acquiring any rights as holder, has to report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition. In view of the fact that the sale deed is registered on 07/06/1985, proviso to Section 149 exempted any person acquiring right by virtue of registered document from obligation to report to the Talathi. In view thereof, I do not find any merit in the submission of Mr. Mantri that learned District Judge ought to have discussed Section 149 of the Code. As far as submission as regards provisions of the Registration Act, 1908 is concerned, I have already dealt with this submission earlier. I do not find any merit in this submission as well.

46. P.W. 1 Madan admitted in cross examination that S. Nos. 246/2 and 246/3 were converted into G. No. 555. Plaintiffs did not put any question in re-examination. They did not even make any attempt to examine any Officer from Consolidation department for explaining admission. In other words, plaintiffs had ample opportunity in the trial Court either to explain the admission of P.W. 1 in re-examination and/or also to examine Officer from the consolidation department to substantiate their plea that G. No. 555 was formed from S. Nos. 246/1, 246/2 and 246/3. That apart, I have already held that the suit challenging the sale deed dated 10/02/1977 is barred by limitation. In view of Sections 98C, 99 and 99A of Tenancy Act, the plaintiffs ought to have moved the tenancy authorities for challenging the sale deed. In view thereof, even if it is accepted that S. No. 246/1, 246/2 and 246/3 were converted into G. No. 555, that will not establish plaintiffs claim that sale deed is invalid.

47. It is necessary to deal with affidavit made by defendant No. 1. Defendant No. 1 has filed affidavit dated 26/04/2011 in this Appeal. It is set out therein that she did not file Written Statement at Exh. 18 resisting R.C.S. No. 202/2002. The Written Statement is not signed by her. She did not appoint any Advocate to

defend her in that Suit. Defendant No. 1 has no interest in the suit land. Gobarya Chavan did not execute the sale deed dated 10/02/1977 in her favour. Defendant No. 1 never entered into sale transaction in respect of the suit land. Mr. Pathan submitted that all these documents are required to be verified from the hand writing and finger print expert.

48. In the entire affidavit, defendant No. 1 did not state that suit summons was not served on her. She did not come out with the case made out in this affidavit before the trial Court. In fact, she did not participate in the trial Court. She did not even appear before the appellate Court. The Appeal proceeded ex parte against her. In short, the case made out in this affidavit was not made out in the trial Court or before the appellate Court. For the first time, defendant No. 1 has come with the case that Gobarya Chavan did not execute the sale deed in her favour, in that, she has no interest in the suit land. She has also contended that she did not file Written Statement at Exh. 18 in the trial Court. She did not sign the said Written Statement. Though she was represented in the trial Court, as also on her behalf Written Statement is filed, she is repudiating the said facts. In other words, she is trying to create an impression that her Advocate acted contrary to her instructions. In my opinion, having regard to the record before the Courts below, it is not open to the defendant No. 1 to allege facts for the first time in the affidavit which were not pleaded in the trial Court. Defendant No. 1 also did not participate in the trial Court and did not face cross examination. Be that as it may. To say the least, the affidavit does not inspire any confidence. The said affidavit is accordingly discarded.

49. In the light of the aforesaid discussion, my findings recorded against the substantial questions of law formulated on 10/11/2014 are as under:

50. In light of the aforesaid discussion, the prayers of the plaintiffs for declaration of ownership of the suit land is dismissed (part of prayer clauses A and A-1). The prayers for cancellation of the sale deed dated 10/02/1977 and other sale deeds and consequent entries effected on that basis is also dismissed (prayer clauses A-2 and A-3). Prayer for setting aside decision of the Tahsildar in proceeding No. 2001/Jama/1/KV/1281 also is dismissed (prayer clause B). The substantial questions of law are answered accordingly. However, as far as substantial question of law No. (iii) is concerned, learned District Judge has not discussed the evidence while deciding the point of possession. In other words, only following relief's survive for consideration:

(1) It be declared that the plaintiffs are in possession of the suit land (part of prayer clauses " A " and " A-1 ").

(2) That the defendants be restrained from interfering in the possession of the suit land (prayer clause " C ").

51. The learned District Judge now will decide whether the plaintiffs are entitled to a decree:

(A) of declaration that they are in possession and

(B) of perpetual injunction restraining the defendants from causing obstruction to their possession over the suit land.

52. The parties shall appear before the learned District Judge on 12/01/2015 and for that purpose fresh notice need not be issued to them. The learned District Judge is requested to decide these points on the basis of evidence already on record within 3 months from the date of appearance of the parties. During the pendency of Appeal, the Order dated 30/01/2013 of the Apex Court directing the parties to maintain status-quo shall remain in force. The office shall transmit the record and proceedings to the District Court forthwith. The Appeal shall be heard only on these two points.

53. The Appeal is partly allowed in aforesaid terms with no order as to costs.