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Exh 22

**IN THE DISTRICT COURT
OF SINDHUDURG**

AT: OROS

TAL. : KUDAL, DIST. : SINDHUDURG

(Presided over by Dr Sudhiir M Deshpande, Principal
District Judge, Sindhudurg)

REGULAR CIVIL APPEAL NO. 146 OF 2016
(CNR MHSIo10005792016)

1. Manohar Fakroji Desai
Age 67 yrs., Occu.: Agriculture
residing at Kalane, Taluka Dodamarg
District Sindhudurg
2. Sakharam Fakroji Desai
Age 70 yrs., Occu.: Agriculture
3. Vishwas Fakroji Desai
Age 66 yrs., Occu.: Agriculture
4. Laxmi Bala Desai
Age 66 yrs., Occu.: Agriculture
Appellants No. 2 to 4 through their
power of attorney holder
Manohar Fakroji Desai
residing at Kalane, Taluka Dodamarg
Dist Sindhudurg

Appellants
(Original
plaintiffs No. 1 to
4)

Versus

1. Shrikant Ganesh Nadkarni
deceased – through his legal
representative
1-A Asha Shrikant Nadkarni
Deceased – through her legal
representative
1A1 Aditya Shashikant Nadkarni
Deleted

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| <p>1A1-1 Malti Madhav Mondkar
Age 84 yrs., Occu.: Household
R/o C/o Shrimati Shirodkar
3-Datta Apartment, Chitralay,
Bhoisar, Mumbai- 401504</p> <p>1A1-2 Sheela Gopal Keni
Age 82 yrs., Occu.: Household
R/o Vrindavan, third floor
Rehata Township
Malad (West)
Mumbai – 400 097</p> <p>1A1-3 Mangesh Shriniwas Nadkarni
Age 62 yrs., Occu.: Nil
R/o D-7, Priyanka park, Tidake
Nagar, Kunwadi, Near Sandip
Hotel, Nasik
Taluka and District Nashik</p> | <p>Respondents
(Original
Defendants No.
1A1, 1A1-1, 1A1-2
& 1A1-3)</p> |
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Appearance:

Mr V P Chindarkar, Ld Advocate for the appellants

Respondents No. 1A1-1 to 1A1-3: *ex parte*

J U D G M E N T

(Declared on: 31st day of July, 2026)

The present appeal has been preferred by the original plaintiff challenging the Judgment and Decree dated 05.07.2016 passed by the learned Civil Judge (Junior Division), Dodamarg in Regular Civil Suit No. 06 of 2015 (originally instituted before the Court of Civil Judge, Junior Division, Sawantwadi bearing RCS No. 60 of 1998), whereby the suit filed by the plaintiff seeking perpetual injunction came to be dismissed.

2] For perceptual convenience, the parties are referred to by their original positions and nomenclature as in the suit before the trial court.

3] The properties are as follows.

The property is situated at village Kalane, Tal. Dodamarg, District Sindhudurg.

Survey No.	Hissa No.	Admeasuring H. Are
60	1/53	0-42-0 0-05-0

4] The facts leading to the present appeal are as follows: The plaintiffs pleaded that the suit property was their ancestral land and that the defendants had no connection with the said land. The defendants are taking advantage of their names on the record of rights by mistake. The defendants try to create a third-party interest or transfer the land. The plaintiffs are doing rice farming in the suit property. On 13.08.1998, the defendants gave a threat to the plaintiffs that they would transfer the land to a third party. The plaintiffs even noticed that there was an encumbrance of Swami Vivekanand Credit Society in the “other rights” column of the 7/12 extract. The plaintiffs sent a notice to the said bank through their advocate.

5] It is further pleaded that the defendant was not residing in the village, and since 1978 he is settled in Mumbai. The defendant misled the predecessors of the plaintiff, namely Fakroji Bhiva Desai and Yashwant Bhiva Desai and entered his name as a tenant. However, the

defendant started taking advantage of his name on the record of rights.

6] It is further pleaded that the plaintiffs have this property as their ancestral property. The said property was converted into non-agricultural land vide order of the Tahasildar, Sawantwadi dated 16.08.1981. Under such circumstances, the Bombay Tenancy and Agriculture Lands Act, 1948 (BTAL) is not applicable. However, in the year 1982, the defendant applied for insertion of his name as a tenant under Section 70(b) and thereafter, in the year 1983, the said land was sold to the defendant. The plaintiffs plead that this all proceeding was illegal and ineffective. The defendants did not have locus standi to set up any right or claim in the suit property under the BTAL Act. The sale of the suit property to the defendant vide Section 32-G of the BTAL Act is invalid and illegal. Plaintiffs plead that such declaration is needed.

7] The cause of action pleaded is that on 13.08.1998 the defendants gave a threat that they would transfer the land. Hence, the suit was brought on 17.08.1998. The plaintiffs pleaded that a perpetual injunction be issued against the defendants and for not disturbing the plaintiff's possession and for not creating any third party interest. Alternatively, it was prayed that if the defendants set up possession theory, then the possession be held with the plaintiffs. The plaintiffs sought a declaration that the entire sale order under 32-G

and the sale certificate 32-M of the BTAL Act is not binding on the plaintiffs.

8] The Defendant No. 1 filed a written statement (Exh 15) and say against application for temporary injunction (Exh 7). The Defendant No. 1 denied all contents of the plaint. He admitted that the suit property was originally owned by Fakroji Desai and Yashwant Bhiva Desai. However, the 32-M certificate has been issued in favour of Defendant No. 1. The Defendant No. 1 denied that the said land is agricultural land. The Defendant No. 1 denied that no threat was given by him to the plaintiffs for transferring the land or creating third party interest. It is also pleaded that the Tenancy Appeal No. 184/1994 was dismissed by the Sub-Divisional Officer (Revenue), Sawantwadi (SDO). However, the plaintiffs suppressed this fact from the pleading of the suit. The defendants did never intended to transfer the land knowing that they can do so only with the permission of the SDO, Sawantwadi.

9] The Defendant No. 1 denied that the property was ancestral property of the plaintiffs. The Defendant No. 1 denied that the proceeding before the Tahsildar was illegal. The plaintiffs have not challenged the entry by which the names of the defendants were entered in the occupants column. The Defendant No. 1 also raised a point that the Mamlatdar Court has already decided the matter and the Trial Court had no jurisdiction to entertain the plaint again.

10] The Defendant No. 1 set up counter claim for perpetual injunction against the plaintiff not to disturb the possession of the defendant and for compensatory cost of ₹3,000/-.

11] The Defendant No. 1A adopted the written statement of the Defendant No. 1 vide purshis Exh 62. Thereafter, the Defendant No. 1A1-3 adopted the written statement of the Defendant No. 1 vide purshis Exh 113.

12] Based on the rival pleadings, the trial court framed following issues and gave findings.

Issues	Findings
1. Do plaintiffs prove that the suit property is their ancestral property and it is in their possession?	In the negative
2. Do plaintiffs prove that the defendant falsely entered his name to the suit property as a tenant?	In the negative
3. Do plaintiffs prove the obstruction at the hands of defendants?	In the negative
4. Whether plaintiffs are entitled for the reliefs claimed?	In the negative
5. Do defendants prove that the suit of plaintiff is bad for non-joinder of necessary parties?	In the affirmative
6. Whether defendants are entitled for the relief claimed?	Partly affirmative. Only permanent injunction against plaintiffs.
7. What order and decree ?	As per final order.

13] The oral evidence before the Trial Court was like this. Only the plaintiffs offered evidence of three witnesses. The defendants did not offer any witness. The Plaintiff No. 1 is the PW1. His evidence is Exh 115. Dattaram Laxman Naik, adjacent land owner is the PW2.

His evidence is Exh 119. Narayan Krushna Desai, another adjacent land owner is the PW3. His evidence is Exh 120.

14] The Defendant No. 1A adopted the written statement of the Defendant No. 1 vide purshis Exh 62. Thereafter, the Defendant No. 1A1-3 adopted the written statement of the Defendant No. 1 vide purshis Exh 113. Exh 5 is the 7/12 extract of the suit property in the name of Shrikant Ganesh Nadkarni as occupant. The land type is shown as Occupant class II. Said 7/12 extract is for the years 1981 to 1998. Exh 6 is the 7/12 extract, which shows the name of Shrikant Ganesh Nadkarni in the occupant's column. This 7/12 extract shows the encumbrance of Swami Vivekanand Credit Society.

15] Exh 44 is the Form No. 2, i.e. extract of NA tax register. In that, the suit property admeasuring 4700 Sq. mtr. is shown as NA land for industrial factory. Period of the NA tax is mentioned as 16.08.1981 to 31.07.1996. The concerned NA order is mentioned in column No. 8. In column No. 10 the name of the first occupant is entered as Shrikant Ganesh Nadkarni. Exh 45 is the application by Shrikant Ganesh Nadkarni against the Fakroji Bhiva Desai and Yashwant Bhiva Desai. It was mentioned in the said application that the said land was taken for cultivation by the applicant from the opponents 30 years back. The said application was under Section 70(b) of the Tenancy Act. It was requested by the applicant that he be declared as a tenant. The said application was filed in the year 1982. It

was registered as Tenancy Case No. 100 of 1982. In Exh 45, there is no mention of date.

16] Further, Exh 46 is the sale deed dated 24.05.1952 between Jiji Krushna Desai and others and Gangabai alias Laxmibai Aatmaram Mudras. This sale deed involved multiple properties including the old Survey No. 60. This sale deed is in the form of the certified copy obtained from the office of the Sub-Registrar, Ratnagiri. Exh 125 is the 7/12 extract showing the name of Shrikant Ganesh Nadkarni in the other rights column along with the NA Order No. LNA/SR/4386 dated 16.08.1981 is mentioned. This 7/12 extract is for the years 1981 to 1992. Exh 126 is similar to the earlier Form No. 2 i.e. Exh 44. This much is the documentary evidence by the plaintiff. There is no documentary evidence from the defendants.

17] The defendant (number is not mentioned), filed a purshis through his Ld advocate (Exh 122) by which it was declared that the defendant did not want to lead any oral evidence. After considering evidence before it the Trial Court dismissed the suit with costs. The counter claim of the defendant was partly allowed. The plaintiffs were perpetually restrained from obstructing peaceful possession and enjoyment of the defendants over the suit property, without following due process of law.

18] Aggrieved by this order, the original plaintiffs have filed the present appeal. The appeal proceeded ex parte vide order dated 01.03.2019 against the Respondent

No. 1A1-3 and order dated 12.02.2021 against the Respondents No. 1A1-1 and 1A1-2. Apart from these three respondents, there were no surviving respondents in the appeal. However, in an ex parte appeal, the appellate Court is required to exercise greater caution and scrutiny. The absence of the respondents does not relieve the appellants of the burden of proving that the impugned judgment suffers from legal or factual infirmity warranting interference. The Court cannot reverse a well-reasoned judgment merely because the appeal is uncontested. It is the duty of the appellate Court to independently reappreciate the entire oral and documentary evidence, examine the findings recorded by the trial Court, and satisfy itself that the appellants have made out a case for interference in accordance with law. With this thought premise, I proceeded to hear the appeal.

19] Heard.

20] Mr Chindarkar, Ld advocate for the appellants (original plaintiffs) submits that though the suit was contested by the defendants before the trial Court, they have chosen not to appear in the present appeal despite due service. Consequently, the appeal has proceeded ex parte against them. He contends that the proceedings under Section 32-G were illegal and that the trial Court failed to appreciate that the suit property is a non-agricultural property. Inviting attention to Exhibit 6, the 7/12 extract, he points out that the "Other Rights" column records N.A. Order No. 4386 dated 16.08.1981, thereby

supporting the plaintiff's case. He further submits that the plaintiff's version is corroborated by the testimonies of PW-2 and PW-3, who are adjoining landowners. According to him, the defendants failed to enter the witness box, and therefore an adverse inference ought to have been drawn against them. He argues that the trial Court failed to properly consider the documentary evidence produced by the plaintiff, namely, Exhibits 5, 6, and 43 (7/12 extracts), Exhibit 44 (N.A. entry), Exhibit 45 (application under Section 70-B, which according to him is not subscribed by the Tahsildar's office and is in violation of Sections 6 and 7 of the Mamlatdar's Courts Act), Exhibit 46 (sale deed), Exhibit 125 (7/12 extract dated 29.09.1999), and Exhibit 126 (NA Tax register). He submits that the grounds raised in the memorandum of appeal deserve acceptance and, therefore, prays that the appeal be allowed.

21] Rival contentions now fall for my consideration. I have framed the following points for my determination.

Sr. No.	Points	Findings
1.	Whether the plaintiffs prove that the suit property is their ancestral property?	No.
2.	Whether the plaintiffs prove that the defendant falsely entered his name to the suit property as a tenant and thereafter as occupant?	No.
3.	Whether the plaintiffs prove that there was obstruction by the defendants?	No.

Sr. No.	Points	Findings
4.	Whether the defendants prove that the suit suffers from non-joinder of necessary parties since the legal representatives of Yashwant Desai and legal representatives of Fakroji Desai were not made parties in the suit?	Yes.
5.	Whether the defendants prove that the Defendant No. 1 had become owner as per 32-M certificate of the suit property?	Yes.
6.	Whether the plaintiffs are entitled to the reliefs claimed by them?	No.
7.	Whether the defendants are entitled to the reliefs claimed by them through counter claim?	Yes.
8.	What Order?	Appeal is dismissed.

R E A S O N S

As to Point No. 1

22] The plaintiffs have asserted that the suit property is their ancestral property and have relied upon the aforesaid documentary evidence in support of their claim. However, none of the documents establishes that the property descended to them by inheritance from a common ancestor. Mere revenue entries showing the names of the plaintiffs' predecessors do not prove the ancestral character of the property. On the contrary, the current revenue record records defendant No. 1 as the tenant and his name appears in the occupant's column. By virtue of Section 158 of the Maharashtra Land Revenue

Code, 1966, such revenue entries carry a statutory presumption of correctness unless rebutted by cogent evidence. The plaintiffs have failed to rebut this presumption. They have not produced any independent title documents, genealogy coupled with title, partition deed, succession record, or any other evidence to demonstrate that their ownership or ancestral rights continued even after 1982, when defendant No. 1 initiated proceedings under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act.

23] The documentary evidence produced by the plaintiffs does not establish that the suit property is their ancestral property. Exh. 5, Exh. 6 and Exh. 125, being 7/12 extracts, are merely revenue records reflecting possession or revenue entries and do not confer or prove title. Exh. 44 and Exh. 126, being extracts of the N.A. Tax Register, only show that the land was converted to non-agricultural use and record the name of the occupant for revenue purposes; they do not disclose the source of ownership. Exh. 45, the application under Section 70(b) of the Tenancy Act, rather weakens the plaintiffs' case, as Shrikant Ganesh Nadkarni claimed tenancy over the land, thereby acknowledging that ownership vested in Fakroji Bhiva Desai and Yashwant Bhiva Desai. Exh. 46, the sale deed dated 24.05.1952, also does not assist the plaintiffs, as they have failed to establish any link between the purchasers under that deed and their own claim of inheritance. There is no pleading about the relevancy of this sale deed Exh 46. Evidence sans pleading is inadmissible.

24] None of these documents traces the devolution of the property from a common ancestor or proves that the suit property was inherited by the plaintiffs as ancestral property. Hence, the documentary evidence is wholly insufficient to establish the plaintiffs' claim of ancestral ownership.

25] Consequently, the evidence on record falls far short of proving that the suit property was or continues to be the ancestral property of the plaintiffs. Hence, I answer the point No. 1 in the negative.

As to Point No. 2

26] The plaintiffs have specifically pleaded that the defendants fraudulently secured the entry of defendant No. 1 as a tenant and, consequently, as the occupant of the suit property. The burden of proving this specific allegation squarely rested upon the plaintiffs. However, the revenue record produced on record shows that defendant No. 1 was entered as a tenant pursuant to proceedings initiated on his application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948, filed in the year 1982. Thereafter, a 32-M certificate came to be issued in his favour, and since then his name has continuously appeared in the occupant's column as a tenant-purchaser. The plaintiffs have failed to produce any cogent evidence to establish that these entries were

fraudulently or illegally obtained or that the tenancy proceedings culminating in the issuance of the 32-M certificate were invalid. Consequently, their plea that the defendants falsely got their name entered in the revenue record remains unsubstantiated.

27] Mr Chindarkar, learned Advocate for the plaintiffs, contended that the suit land had been converted to non-agricultural use in the year 1981 and, therefore, could not have been subjected to tenancy proceedings under the Bombay Tenancy and Agricultural Lands Act. It is, however, pertinent to note that the tenancy appeal preferred by the plaintiffs before the Sub-Divisional Officer, Sawantwadi, was admittedly dismissed. The defendants have specifically alleged that the plaintiffs suppressed this material fact in the plaint. In such circumstances, it was incumbent upon the plaintiffs to place on record the entire tenancy and revenue proceedings, including the proceedings before the Tahsildar, the order passed therein, and the appellate proceedings before the SDO, so that their legality and propriety could be examined. Surprisingly, except for producing a copy of the application under Section 70(b), the plaintiffs have withheld the entire record of the tenancy case and the tenancy appeal. Mr Chindarkar is correct in his submission that a Civil Court can examine the proceedings of the revenue authorities and, in an appropriate case, disregard or set aside an order which is shown to be illegal, without jurisdiction, or patently perverse. However, such an exercise is possible only when

the complete proceedings and orders of the revenue authorities are produced before the Court. In the absence of the relevant record, neither the trial Court nor this appellate Court can scrutinize the legality, propriety or correctness of the tenancy proceedings merely on the basis of allegations made by the plaintiffs.

28] No doubt, the revenue record continues to reflect the N.A. Order in the "Other Rights" column. Nevertheless, despite the land having been converted to non-agricultural use, the Tahsildar declared defendant No. 1 to be a tenant and the said decision was affirmed by the Sub-Divisional Officer, Sawantwadi. If the plaintiffs contend that these proceedings were illegal, perverse or contrary to law, it was incumbent upon them to produce the entire record of the tenancy proceedings, including the orders and judgments passed by the Tahsildar and the SDO, Sawantwadi. Only upon examining those proceedings could the Court ascertain why the tenancy authorities upheld the claim of defendant No. 1 notwithstanding the alleged N.A. conversion of the land. In the absence of the complete record, neither the trial Court nor this appellate Court can undertake a meaningful scrutiny of the legality, propriety or correctness of the orders passed by the revenue authorities.

29] The decisions in **Husein Miya Dosumiya v. Chandubhai Jethabhai**, AIR 1954 Bom 239 and **Madhav Kesu Khuspe v. Sundrabai Mugutrao Phadatare**, 1979 (81) Bom LR 217 do not assist the

appellants. Though these decisions recognise the Civil Court's jurisdiction to examine whether the tenancy authorities acted ultra vires, in violation of the provisions of the BTAL Act, or in breach of the principles of natural justice, such examination is possible only when the impugned order and the complete tenancy proceedings are placed before the Court. In the present case, the plaintiffs have failed to produce the Mamlatdar's order, findings, or the entire record of the tenancy proceedings. Consequently, there is no material to examine the legality or propriety of those proceedings, rendering the aforesaid decisions clearly distinguishable on facts.

30] It would be wholly unsafe, speculative and legally impermissible to hold that the Tahsildar's order was illegal, perverse or without jurisdiction when the order itself, along with the relevant proceedings, has not been produced before the Court. In the absence of the primary record, the Court cannot presume any illegality in the statutory proceedings or conclude that defendant No. 1 fraudulently secured his entry as a tenant and, thereafter, as the occupant of the suit property. The burden to establish such illegality rested squarely upon the plaintiffs, which they have failed to discharge. Hence, I answer point No. 2 in the negative.

As to Point No. 3

31] The plaintiffs have alleged that the defendants obstructed their possession over the suit property. Once

such a specific allegation is made, the initial burden squarely rests upon the plaintiffs to prove the alleged obstruction by cogent and convincing evidence. According to the plaint, the alleged cause of action arose on 13.08.1998, when the defendants purportedly asserted their rights over the suit property and threatened the plaintiffs that they would create third-party interests or transfer the property. Mere pleading of such an allegation, however, is not sufficient. The plaintiffs were required to establish by reliable oral and documentary evidence that the defendants had, in fact, interfered with their possession or extended the alleged threats.

32] It was incumbent upon the plaintiffs to substantiate the aforesaid allegations by leading cogent oral and documentary evidence. However, the examination-in-chief of PW-1, plaintiff No. 1, is substantially a reproduction of the averments made in the plaint and does not furnish any independent proof of the alleged obstruction. More importantly, during cross-examination, PW-1 made several admissions which weaken the plaintiffs' case. He admitted that the suit property was originally agricultural land; that neither his name nor the names of his father or any other legal representative were recorded in the 7/12 extracts; that the name of defendant No. 1 stood entered therein as a tenant; and that he could not explain how or why the name of defendant No. 1 came to be entered in the record of rights. These admissions materially undermine the plaintiffs'

claim and cast serious doubt on their assertion of exclusive ownership and possession.

33] The statement of PW-1 in cross-examination that the suit property is a non-agricultural property does not materially advance the defendants' case nor does it undermine the plaintiffs' claim. Firstly, the non-agricultural character of the land was never a disputed issue, as the plaintiffs themselves produced Exh. 44 and Exh. 126, the extracts of the N.A. Tax Register, and Exh. 6 and Exh. 125, the 7/12 extracts containing the N.A. Order dated 16.08.1981. Thus, the fact that the land had been converted to non-agricultural use already stood established by documentary evidence. Secondly, conversion of agricultural land into non-agricultural land merely changes the user of the land; it neither creates nor extinguishes title, nor does it determine whether the property is ancestral or self-acquired. Therefore, the plaintiff's admission regarding the N.A. nature of the property is only an admission of an undisputed fact and has no bearing on the core issues relating to ownership, ancestral character of the property, or the validity of the rival claims. Consequently, this solitary admission cannot be treated as a material admission affecting the merits of the defendants' case.

34] However, the contemporary revenue record records the defendants, particularly defendant No. 1, as being in possession of the suit property, and not the plaintiffs. In the absence of any cogent evidence

establishing their own possession, the plaintiffs cannot successfully contend that the defendants obstructed or interfered with their possession. A claim of obstruction necessarily presupposes lawful possession of the person alleging such obstruction. Since the plaintiffs have failed to prove their possession, their allegation that the defendants obstructed them or threatened to dispossess them cannot be accepted. Hence, I answer point No. 3 in the negative.

As to Point No. 4

35] This point relates to the defendants' contention that the suit is bad for non-joinder of necessary parties. The defendants have specifically pleaded that the legal representatives of Yashwant Desai and Fakroji Desai, who were necessary and proper parties to the dispute, have not been impleaded. According to the defendants, in the absence of these persons, no effective and complete adjudication of the issues involved in the suit is possible.

36] There is no material on record to indicate that Yashwant Desai and Fakroji Desai had no concern with the suit property. On the contrary, the plaintiffs have neither pleaded nor proved that these persons or their legal representatives had no subsisting right, title or interest in the property. It is pertinent to note that the defendants have specifically raised the plea of non-joinder in paragraph 14 of the written statement (Exh. 15) and have also asserted their possession over the suit property in paragraph 13 thereof. Since the suit seeks a declaration of

title and a decree of perpetual injunction, any adjudication in the absence of the legal representatives of Yashwant Desai and Fakroji Desai, whose rights are likely to be directly affected, would be incomplete and ineffective. Their presence was, therefore, necessary for a complete and effective adjudication of the dispute, and the suit suffers from non-joinder of necessary parties. Under such circumstances, I answer point No. 4 in the affirmative.

As to Point No. 5

37] It is the consistent case of defendant No. 1 that he acquired the status of a tenant through proceedings under the Bombay Tenancy and Agricultural Lands Act and subsequently became a tenant-purchaser upon the issuance of the 32-M certificate. The entries in the 7/12 extracts consistently record his name as tenant and thereafter as occupant (tenant-purchaser), thereby corroborating the defence pleaded in the written statement.

38] It is true that the defendants neither adduced oral evidence nor produced any documentary evidence. However, the plaintiffs themselves have placed on record the relevant revenue documents, including the 7/12 extracts. Those very documents consistently record the name of defendant No. 1 in the occupant's column as a tenant-purchaser. By virtue of Section 158 of the Maharashtra Land Revenue Code, 1966, such revenue entries carry a statutory presumption of correctness unless

rebutted by cogent evidence. The plaintiffs have failed to rebut this presumption. On the contrary, the record reveals that the plaintiffs challenged the tenancy proceedings before the Sub-Divisional Officer, Sawantwadi, but their appeal came to be dismissed. The Defendant No. 1 has alleged that the plaintiffs have suppressed this dismissal. The plaintiffs have neither pleaded nor proved that the orders passed by the tenancy authorities were subsequently set aside or modified. Consequently, the revenue entries in favour of defendant No. 1 have attained finality. Unless the tenancy proceedings and the consequential entries are successfully challenged and declared illegal or without jurisdiction by a competent forum, the Civil Court is bound to give due effect to the existing revenue record.

39] As discussed earlier, to prove the propriety or illegality in the proceeding before the Tahasildar, the plaintiffs did not adduce any evidence, oral or documentary, before the Trial Court. When that record is not before this Court, or for that matter, before the Trial Court, the proceeding before the Tahasildar cannot be declared as illegal.

40] The plaintiffs have, in substance, questioned the legality and validity of the tenancy proceedings culminating in the issuance of the 32-M certificate. Such proceedings were conducted by the Tahsildar, a statutory authority acting under the Bombay Tenancy and Agricultural Lands Act, and any declaration that those

proceedings or the resultant order are illegal, void or without jurisdiction would directly affect the rights and actions of that authority as well as the State Government administering the Act. Therefore, the Tahsildar and/or the State Government were necessary parties to the suit. The Government Pleader could have thrown light to justify the proceeding before the Tahasildar even when land was converted for NA use, apparently in year 1981.

41] In their absence, the Civil Court could neither effectively adjudicate upon the validity of the tenancy proceedings nor grant any declaration prejudicial to the statutory authorities behind their back. The omission to implead the Tahsildar or the State Government, therefore, is a serious defect amounting to non-joinder of necessary parties and itself renders the challenge to the tenancy proceedings unsustainable. From this angle also, the suit is suffering from non-joinder of necessary parties. It is not expected in civil law, either procedurally or legally, to seek declaration against a party, without impleading that party.

42] The plaintiffs have not produced the complete record of the tenancy and revenue proceedings, including the pleadings, evidence, order sheets and the final orders passed by the competent authorities. Such documents were the best evidence to demonstrate the nature, outcome and legality of those proceedings. Their non-production, despite being within the plaintiffs' reach, justifies drawing an adverse inference under Section 114(g) of the Evidence Act, that had the complete record been produced, it would

not have supported the plaintiffs' case. In the absence of the entire revenue litigation record, the Court cannot presume that the Tahsildar's proceedings were illegal or contrary to the object of the Bombay Tenancy and Agricultural Lands Act. Rather, the suppression of the best available evidence militates against the plaintiffs' contention.

43] In the absence of any evidence showing that the 32-M certificate has been set aside, modified or declared invalid by a competent authority or Court, it must be presumed that the certificate continues to hold the field. Consequently, it must also be presumed that defendant No. 1 acquired the status of a tenant-purchaser and owner under the Bombay Tenancy and Agricultural Lands Act, and that such status continues to subsist till date. Hence, I answer point No. 5 in the affirmative.

As to Point No. 6

44] The plaintiffs approached the Court on the specific plea that the suit property was their ancestral property. However, they have failed to substantiate this assertion by any cogent oral or documentary evidence. On the contrary, the revenue record is wholly inconsistent with their pleadings and supports the case of the defendants by recording the name of defendant No. 1 as the tenant-purchaser and occupant. The plaintiffs have further failed to establish their possession over the suit property and, consequently, have also failed to prove the

alleged obstruction or interference by the defendants. Since the revenue entries carry a statutory presumption of correctness, which the plaintiffs have failed to rebut, the defendants' case stands fortified. Having failed to establish the foundational facts of ancestral ownership and possession, the plaintiffs are not entitled to the declaration and consequential relief of perpetual injunction sought in the suit. Hence, I answer point No. 6 in the negative.

As to Point No. 7

45] Defendant No. 1 filed his written statement and say at Exh. 15, which was adopted by the contesting defendants No. 1A and 1A1 to 1A3. In paragraph 20 of the written statement, defendant No. 1 also raised a counter-claim against the plaintiffs. Upon an overall appreciation of the oral and documentary evidence led by the plaintiffs, it is evident that they have failed to establish the foundational facts necessary to succeed in the suit. They have failed to prove that the suit property was ancestral, that they were in lawful possession thereof, that the defendants obstructed or interfered with such possession, that the proceedings under Sections 32-G and 32-M of the Bombay Tenancy and Agricultural Lands Act were illegal, or that the proceedings before the Tahsildar suffered from any illegality, perversity or procedural impropriety. Consequently, the plaintiffs have failed to discharge the burden cast upon them to prove their case.

46] Mr Chindarkar, learned Advocate for the plaintiffs, argued that the defendants neither adduced oral nor documentary evidence before the trial Court and have also remained absent in the present appeal, as a result of which the appeal has proceeded ex parte against them. Mere absence of evidence on the part of the defendants, however, does not by itself entitle the plaintiffs to a decree. The initial burden always lies upon the plaintiffs to establish their case on the touchstone of preponderance of probabilities. It is only after the plaintiffs succeed in proving the foundational facts of their claim and create a prima facie presumption in their favour that the burden shifts to the defendants to rebut the same. In the present case, as discussed hereinabove, the plaintiffs have failed to prove the essential ingredients of their case, namely, the ancestral nature of the suit property, their title, possession, and the alleged illegality of the tenancy proceedings. Consequently, the burden never shifted to the defendants. Therefore, the defendants' failure to lead evidence before the trial Court or their absence in the present appeal cannot, by itself, constitute a ground to grant the reliefs claimed by the plaintiffs.

47] Therefore, I am of the view that the defendants' failure to adduce oral or documentary evidence does not adversely affect their case, particularly when their defence as set out in the written statement and the counter-claim finds substantial support from the revenue record produced by the plaintiffs themselves. The documentary evidence on record overwhelmingly supports the

defendants' case, especially the entries recording defendant No. 1 as the tenant-purchaser and occupant. The plaintiffs having failed to establish the foundational facts necessary for the reliefs claimed by them, there remains no legal impediment to accepting the defence. In these circumstances, the counter-claim preferred by defendant No. 1 and supported by the contesting defendants is rightly decreed by the trial Court. Hence, I answer Point No. 7 in the affirmative.

As to Point No. 8

48] On a careful reappraisal of the entire oral and documentary evidence, I find no infirmity, perversity or illegality in the findings recorded by the trial Court warranting appellate interference. The trial Court has rightly held that the plaintiffs failed to establish that the suit property was their ancestral property, as none of the documents produced by them traces the title from a common ancestor or proves devolution by inheritance. The trial Court has also correctly attached due significance to the admitted issuance of the 32-M certificate in favour of defendant No. 1 and the plaintiffs' admission that their challenge thereto before the SDO and the Maharashtra Revenue Tribunal had failed. The plaintiffs did not produce the complete record of the tenancy proceedings or the findings of the Tahsildar, and therefore their contention that the tenancy proceedings were illegal or contrary to the object of the Bombay Tenancy and Agricultural Lands Act could not have been accepted.

Merely because the defendants did not enter the witness box, the burden cast upon the plaintiffs to prove their title did not stand discharged. Likewise, the admitted non-agricultural nature of the land is wholly irrelevant to the question whether the property was ancestral. Thus, the trial Court has appreciated the evidence in its proper perspective, applied the correct legal principles, and reached a well-reasoned conclusion. No ground is made out for interference with the impugned judgment and decree.

49] A cumulative consideration of the reasons for points No. 1 to 7 leads to the conclusion that the plaintiffs cannot succeed even in this appeal, despite the fact that the appeal proceeded ex parte. Consequently, I am passing the following order.

ORDER

1. The Regular Civil Appeal is dismissed.
2. The Judgment and Decree dated 05.07.2016 passed by the learned Civil Judge (Junior Division), Dodamarg in Regular Civil Suit No. 06 of 2015 (originally instituted before the Court of Civil Judge, Junior Division, Sawantwadi bearing RCS No. 60 of 1998) is hereby confirmed.
3. Send the record of the proceeding to the Trial Court forthwith.
4. Under such circumstances, inter alia, since the respondents did not appear in this appeal, no order as to costs.

5. The appeal stands disposed of.

Sd/-
(Dr Sudhiir M Deshpande)
Principal District Judge
Sindhudurg at Oros

All concerned to act upon the digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard, attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) **Shital Krushna Dhake v. Krushna Dhake**, MANU/MH0285/2018.