

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 275 OF 2020
WITH
CIVIL APPLICATION NO. 765 OF 2019
AND
INTERIM APPLICATION NO. 30041 OF 2022**

**AND
SECOND APPEAL NO. 174 OF 2020
WITH
CIVIL APPLICATION NO. 763 OF 2019
WITH
INTERIM APPLICATION NO. 30040 OF 2022**

Shri. Mahadu Rakhmaji Undre
and Ors.

} ..Appellants

V/S.

Green Fields Partnership Firm
and Ors.

} ..Respondents

Mr. Atul Damle, Senior Advocate with Mr. Vivek Patil, Mr. Kiran G. Kukarni, Ms. Anjali Shaw, Mr. Deepak Jain i/by . Mr. D.V. Sutar for the Appellant in SA/ 275/2020 and SA/174/2020.

Mr. Sarang Satish Aradhye with Ms. Gauri Velankar and Mr. Sarth Chorelia, for Respondent Nos.1B and 2 to 5.

Mr. S.M. Gorwadkar, Senior Advocate with Mr. Abhijit Kulkarni i/by. D.D. & Abhijit Associates, for Respondent Nos.6 and 7 in SA-174/2020 and for Respondent Nos.7 and 8 in SA/275/2020.

CORAM : SANDEEP V. MARNE, J.

Dated : 18 March 2024.

P.C. :

1) By this Appeal, Appellants challenge Judgment and Decree dated 28 January 2019 passed by the District Judge, Pune in Regular Civil Appeal No. 135 of 2016. The first Appellate Court has allowed the Appeal filed by the Respondents and has set aside the Decree dated 29 January 2015 passed by the 2nd Joint Civil Judge Senior Division, Pune in Special Civil Suit No. 2244 of 2007 (Old Regular Civil Suit No. 2/2004). The first Appellate Court has accordingly dismissed Special Civil Suit No. 2244 of 2007 filed by the Appellants.

2) It appears that one Satyavan Eknath Undre, who is the brother of Mahadu Rakhmaji Undre instituted Regular Civil Suit No.774 of 2000 in the Court of Civil Judge Junior Division, Pune challenging the Deeds of Retirement bearing No. 5006/1994 and 5007/1994. He also sought relief of preliminary decree for partition and separation of his share. The suit came to be dismissed by Decree dated 17 October 2002. The Appeal filed against the said Decree was also dismissed on 21 October 2003. It appears that Second Appeal was filed before this Court challenging the decisions of the Trial and the first Appellate Court in Regular Civil Suit No. 774 of 2000 being Second Appeal No. 660 of 2008.

3) In the meantime, the other family members of Undre Family including Mahadu Rakhmaji Undre were advised to file Regular Civil Suit No.2 of 2004 challenging the Deeds of Retirement dated 4 February 1993. On the ground that the other family members including Mahadu had filed

Regular Civil Suit No. 2 of 2004 (renumbered as Special Civil Suit No. 2244 of 2007), Satyawar was advised to withdraw the Second Appeal No.660 of 2008 filed in this Court. Accordingly, Second Appeal No.660 of 2008 came to be withdrawn on 13 February 2009 citing the reason of pendency of Regular Civil Suit No. 2 of 2004. It appears that Second Appeal was simply permitted to be withdrawn and no opportunity was granted to institute fresh suit nor parties agreed for variation of the Decrees challenged in the Second Appeal.

4) It appears that the prayers in Regular Civil Suit No. 2 of 2004 (Special Civil Suit No. 2244 of 2007) were amended and a prayer was incorporated therein to seek a declaration that the tenure of the Deed of Partnership came to an end by efflux of time on 21 May 2011 and consequently possession of the suit property was sought to be recovered from Defendants and handed over to the Plaintiffs on that count.

5) The Trial Court proceeded to decree Regular Civil Suit No.2 of 2004 (Special Civil Suit No. 2244 of 2007) on 29 January 2015. One of the issues framed by the Trial Court was whether the subsequent suit filed by Undre family members was barred by *res-judicata* in the light of filing and decision of Regular Civil Suit No. 774 of 2000 filed by Satyawar. The Trial Court answered the issue of *res-judicata* in the negative holding that the two suits were filed for different purposes. The first Appellate Court has however upheld the objection of *res-judicata* and on that count, has considered it appropriate not to decide the other issues. The first Appellate Court has accordingly dismissed the suit of the Appellants.

6) Mr. Damle, the learned senior advocate for the Appellants would submit that the tenure of both the suits was different. That the first suit was for partition. That on account of subsequent amendment incorporated in the second suit, relief of possession was sought on the ground of tenure of Deeds of Retirement coming to an end by efflux of time. That this relief could not have been sought and was rightly not sought by Satyawar in the first suit. That therefore the nature of relief claimed in the two suits was different. Lastly, he would submit that the second suit also involved the additional issue of validity of subsequent sale executed in favour of Defendant Nos.6 and 7, which was not raised in the earlier suit.

7) Mr. Gowardkar, the learned senior advocate for contesting Respondents would counter the submissions of Mr. Damle.

8) Perusal of the prayers made in both the suits would indicate that both the suits were filed essentially for same purpose of seeking a declaration that the Deed of Retirement is void. It appears that Rakhmaji Undre had entered into partition with Defendant Nos. 2 to 5 and had brought the suit property in the partnership firm. It appears that the said Rakhmaji executed Deeds of Retirement in the year 1994, under which he was retired from the firm. This is how the suit properties remained in the partnership firm, sans Rakhmaji Undre.

9) It is Mr. Damle's contention that such retirement has no existence in the eyes of law as Rakhmaji had brought suit land into partnership firm and he could not have been retired from the firm. He would

submit that the Deed of partnership itself contained a covenant restraining Rakmaji from retiring from the firm. Be that as it may. Satyavan independently tried his luck by filing Regular Civil Suit No. 774 of 2000 which clearly contained a prayer for cancellation of the Deeds of Retirement. In the subsequent suit filed by the other members of Undre Family, there was a prayer for seeking a declaration that the Deeds of Retirement was executed in violation of the terms and conditions of the Deed of Partition and that therefore the same is not binding on them. Thus, both the suits involved the issue of validity of Deeds of Retirement. That issue came to be decided in Regular Civil Suit No. 774 of 2000, in which several members of Undre Family were also impleaded as party Defendants. Since they had common interest alongwith Satyawar in Regular Civil Suit No.774 of 2000, they were infact co-plaintiffs in the suit as rightly observed by the first Appellate Court, which has branded them as '*defacto plaintiffs*'. After the Decree passed in Regular Civil Suit No. 774 of 2000 attained finality on account of withdrawal of the Second Appeal, it was not open to the Undre Family members to file another suit seeking same prayers.

10) Addition of prayer for termination of tenure of partnership by efflux of time, to my mind, does not and cannot make any difference. Infact once it is held that the Deed of Retirement is valid, even if the tenure of the partnership came to an end after 45 years, the same does not enure to the benefit of the Appellants. The assets of partnership firm would then devolve upon surviving partners as per the terms of partnership. They would not revert to the retiring partner. The inclusion of prayer for setting aside

subsequent sale would also not save the subsequent suit from operation of principle of *res-judicata*.

11) After considering the overall conspectus of the case, I am of the view that the Trial Court had erroneously rejected the objection of *res-judicata* without recording cogent reasons. The first Appellate Court has rightly held the suit filed by the Appellants to be barred by *res-judicata*. No substantial questions of law are involved in the Appeals. The Second Appeal are accordingly **rejected**. There shall be no order as to costs.

12) Respondent Nos.6 and 7 in Second Appeal No. 174/2020 who are Respondent Nos.7 and 8 in Second Appeal No. 275/2020 are permitted to withdraw the amounts deposited in this Court.

13) With rejection of Appeals, pending Interim/Civil Applications have become infructuous and do not survive. The same also stand disposed of.

SANDEEP V. MARNE, J.

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