

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Second Appeal No. 418 of 2006

Shrawan Keru Misal,
deceased through L.Rs.,

1A. Shankar Shrawan Misal,
deceased through L.Rs.,

1A-1) Ratnamala Shankar Misal,
Age : 65 years,
Occupation : Household,
R/o. Village Wadghul,
Taluka : Shrigonda,
District : Ahmednagar.

1A-2) Dipak Shankar Misal,
Age : 45 years,
Occupation : Service
with Canara Bank,
Ahmednagar,
R/o. As above.

1B. Harnabai w/o. Shrawan Misal,
Since deceased during the
pendency of suit and appellant
No. 1A is her L.R.

.. Appellants
(L.Rs. of Original
Defendant No.1)

versus

1. Vithal Eknath Kulkarni,
since deceased through L.Rs.,

1A) Smt. Kamal Vithal Kulkarni,
since deceased through her L.Rs.,

1A-1) Balasaheb Vithal Kulkarni,
since deceased through his L.Rs.,

Sulochana Balasaheb Kulkarni,
Age : 47 years,
Occupation : Household,
R/o. Shedgaon,
Taluka : Shrigonda,
District : Ahmednagar,
& Others.

.. Respondents
(Original plaintiff &
defendant nos.2 to 4)

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Mr. Rajendra S. Deshmukh, Advocate, for the appellants.

Mr. A.B. Kadethankar, Advocate, for respondent nos.1A to 1M, 4B-1.

Mrs. M.S. Jagtap, Advocate, for respondent nos.2 and 3.

Mr. P.B. Salunke, Advocate, for respondent nos.4A, 4C to 4G and 5 (Absent).

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CORAM : A.V. NIRGUDE, J.

DATE : 29TH JULY 2015

PER COURT :

1. Perused the order dated 17th June 2011, passed by this Court.
2. The learned Counsel for the appellants tells me, that despite my suggestion to go before my learned Brother, Justice S.V. Gangapurwala, for further orders, so far since last four years, no steps were taken. I am, therefore, inclined to hold that the appellants do not want orders from Justice S.V. Gangapurwala, and since Second Appeals

are now my assignment, I would complete the work.

3. The Second Appeal was about to be dismissed. The reasons are already recorded. The observations made by my learned predecessor on 7th April 2011, are also adopted in this judgment for dismissal of the appeal. The observations made in paras 5, 6 and 7 are quoted below :-

"5. With the assistance of the learned Counsel, I have gone through the judgments. The defendant no.1 is claiming through his father and is not claiming an independent right. As such the admission given by his father would be binding on him. The father of defendant No.1 had instituted suit for redemption of mortgage against plaintiff's father in respect of same suit property, subsequently withdrew the suit by filing a Purshis admitting ownership of plaintiff's father. The copy of said Purshis is filed on record at Exh.134. The said admission is in a judicial proceeding. The same can be used as an admission *proprio vigore* as is held by the Apex Court in a case of "**Thiru John (In C.A.Nos.1895-1896 of 1974) Vs. Subramhamanyan (In C.A.No.1907 of 1974) Vs. The Returning Officer and others**", AIR 1977 Supreme Court 1724. In light of that, the Courts have properly taken into consideration the aspect of ownership.

6. The judgment relied by Mr. Deshmukh, learned Counsel, of the Apex Court in a case of "**Bhavnagar Municipality Vs. Union of India and another**", AIR 1990 Supreme Court 717, would be of no assistance as in the said case, it was held that the plaintiff had no title, whereas in the present case, both the Courts have concurrently come to the conclusion that the plaintiff has proved his title more so, on the basis of admission of the father of defendant No.1 himself in the judicial proceedings and the defendant came with the case that the property was mortgaged with the plaintiff's father by the defendant No.1's father but they could not prove the said mortgage.

7. It is a trite law that one co-owner can institute a suit for possession. Even assuming that the plaintiff is not exclusive owner of the property and his pleadings did not show that he filed the suit as a Karta of the family, still, as per the record he is the owner who could maintain the suit for possession and the other co-owners have consented for the said. "

4. The appellants, who are legal representatives of original defendant no.1, and who are pressing decree for possession, want to

continue this litigation for continuing to remain in possession. Because of pendency of this appeal, the decree is not executed. There are as many as 23 respondents - original plaintiffs, out of which, 13 respondents compromised the case with the appellants. The compromise is already recorded. The remaining respondents - original plaintiffs are not inclined to compromise the suit, at least, as on today. Some of them are eager to put an end to this litigation. I am also inclined to hold such view. This litigation should be concluded. The Second Appeal should be dismissed with liberty to the appellants (Legal representatives of original defendant no.1) to pursue such remedy as may be available in law to them for further relief.

5. In the result, the Second Appeal is dismissed with liberty to the appellants to pursue such remedy as may be available in law to them for further relief.

(A.V. NIRGUDE)
JUDGE

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