

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(CIVIL APPELLATE JURISDICTION)

SECOND APPEAL NO. 745 OF 1992

Shri Tanaji Krishna Shinde,
Age : 23 years, Resident of
Jakhinwadi, Taluka : Khanapur,
Distt. Sangli.

APPELLANT
(Org. Deft. No. 2)

...VERSUS...

- 1] Mahadeo Maruti Pisal
(since deceased through L.R.)
- 1A] Smt. Rukhmini Mahadeo Pisal
- 2] Dattu Maruti Pisal,
aged 46 years,
- 3] Namdeo Maruti Pisal,
(since deceased through L.R.)
- 3A] Ramchandra Namdeo Pisal
(since deceased through L.R.)
- 3A(i)] Smt. Rukmini Ramchandra Pisal,
(since deceased through L.R.)
- 3A(ii)] Rohim Ramchandra Pisal.
- 3A(iii)] Reshma Ramchandra Pisal
- 3B] Tanaji Namdeo Pisal.
- 4] Krishnadeo Maruti Pisal,
aged 42 years.

- 5] Ananda Maruti Pisal,
(since deceased through L.R.)
- 5A] Lilavati Ananda Pisal.
- 5B] Amruta Ananda Pisal,
- 5C] Sau. Sangita Bapu Shinde,
- 5D] Savita Shahaji Sarnobat.
- 6] Sonabai w/o Ram Salunkhe,
age 55 years,
- 7] Dropadabai W/o Vasant Damle,
age 35 years,
- 8] Shahabai w/o Maruti Pisal,
(since deceased through L.Rs)
- 8A] Mahadeo Maruti Pisal
(since deceased through L.Rs.)
- 8B] Dattatrya Maruti Pisal,
- 8C] Namdeo Maruti Pisal
(since deceased through L.R)
- 8D] Krishnadeo Maruti Pisal.
- 8E] Ananda Maruti Pisal
(Since deceased through L.R)
- 8F] Savitri Rama Salunkhe
- 8G] Dropadi Vasant Damane,

Respondent Nos. 1 to 5 Agriculturst
and 6 to 8 Household Workers.
All 1 to 8 residing at Jakhinwadi,
Taluka Khanpur, Distt. Sangli.

9] Anna Laxman Tupe
aged 75 years (since deceased through L.R.)

9A] Tarubai w/o Anna Tupe,
age 50 years, Occ. Agriculturist & Household work
Residing at Jakhinwadi,
Taluka Khanapur, Distt Sangli.

RESPONDENTS
(R-1 to 8 L.Rs of Org.Plff
& R-9 L.R. of Org.
Defendant No.1)

Shri Anilkumar Patil, Advocate for appellant
Shri Rahul S. Kate, Advocate, for respondent Nos. 2, 3b, 4, 5a to 5d

CORAM: R. K. DESHPANDE, J.
DATE : 6th AUGUST, 2015 .

ORAL JUDGMENT

1] In Regular Civil Suit No. 34 of 1978, the trial Court by its judgment and order dated 27th October, 1986 refused to grant specific performance of the agreement of sale dated 3rd December, 1973 at Exh. 71. The Defendant No. 1-A is, however, directed to return to the plaintiffs Rs.1000/- together with interest thereon at the rate of 6% per annum from the date of filing of the suit till the actual payment is made. This was the subject matter of challenge in Regular Civil Appeal No. 13 of 1987, which has been decided by the lower appellate Court on 17th August,

1992. The lower appellate Court has passed a decree for specific performance of agreement at Exh. 71. The operative portion of the order passed by the lower appellate Court being relevant, is reproduced below.

"The appeal is allowed. The impugned judgment and decree is set aside. The plaintiff's suit is decreed for specific performance of the agreement of sale deed dated 3rd December, 1973 (Exhibit 71) as follows :

The Defendant No. 1-A shall immediately apply for permission to sell the suit land in favour of the Plaintiff Nos. 1-1 to 1-8 to the Competent Authority under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, within period of one month after receiving such permission, she shall receiving remaining consideration of Rs.7,100 from the Plaintiff Nos. 1-1 to 1-8 and shall execute sale deed in respect of the suit lands in their favour. The registration charges shall be incurred by the Defendant No. 1-A. The Defendant No.2 shall join the Defendant No. 1-A as executant No.2 of the sale deed.

The Plaintiff Nos. 1-1 to 1-8 shall recover joint possession of the suit lands from the Defendant No.2 after execution of the sale deed.

On failure of the Defendant to obtain sale permission and execute sale deed as stated above, the Plaintiff Nos. 1-1 to 1-8 would be entitled to get the decree executed through process of law.

The Defendant Nos. 1-A and the Defendant No. 2 shall bear their own costs and shall costs of the suit and that of the appeal, to the plaintiff Nos. 1-1 to 1-8/

this Court and pressed by the learned counsel appearing for the appellant are contained in paragraph 1(a) and 1(b) of the memo of appeal, which are reproduced below.

- (a) *Whether the agreement of the sale dated 3rd December, 1973, in favour of the Plaintiff was unenforceable since the sale of the suit land would admittedly create a fragment and was thus illegal under Sections 6, 7 and 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act?*
- (b) *Whether the finding recorded by the lower Appellate Court in paragraph 17 of his judgment that the suit land is not an irrigated land since it receives well water is legal and proper?*

3] It is not disputed that if by way of agreement to sell, the land proposed to be sold creates a fragment then it would be hit by Section 6, 7 and 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Keeping in view this aspect of the matter, the lower appellate Court has issued directions to the defendant no. 1-A to immediately apply for permission to sell the suit land in favour of the plaintiff Nos. 1-1 to 1-8 to the competent Authority under the said Act and upon receiving such permission, the defendant no.1-A shall receive the remaining consideration of Rs.7,000/- from the plaintiff nos. 1-1 to 1-8 and shall execute the

sale deed in their favour.

4] It is not in dispute that all the questions in respect of creation of fragment and also of the fact whether the land in question is an irrigated land are required to be decided by the Competent Authority under the said Act. If the questions are answered holding that such permission is not required to be granted then the decree passed by the lower appellate Court shall become unenforceable, but if the competent Authority grants the permission then the decree would become enforceable on the terms specified in the order passed by the lower appellate Court. It is also made clear that the Competent Authority under the said Act shall decide all the questions arising between the parties in respect of fragment without being influenced by any of the observations either made by this Court or the lower appellate Court or the trial Court.

5] With this clarification, no alteration is called for in the judgment and order passed by the lower appellate Court. The second appeal stands

disposed of.

Consequently, the civil application, if any, does not survive.

JUDGE

Rvjalit