

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1000 OF 2005
WITH
CIVIL APPLICATION NO.542 OF 2015

Bhagwant Shankar More and another ... Appellants
Vs.
Bhagwant Bhika Thate (decd) through heirs
Sitabai B. Thete and others ... Respondents

Mr. P. B. Shah for Appellants.
Mr. N. V. Bandiwadekar for Respondents No.1B to 1D.

CORAM : R. G. KETKAR, J.
DATE : 27TH APRIL, 2015

P.C. :

Not on Board. At the request of the learned Counsel appearing for the parties, taken up in the production board.

2. Heard Mr. Shah, learned Counsel for appellants and Mr. Bandiwadekar, learned Counsel for respondents No.1B to 1D.

3. Mr. Shah submitted that the appellants instituted Suit for -
(i) specific performance of agreement of sale dated 10.05.1964;
(ii) challenging the agreement executed in the year 1987 at exhibit 103, by defendant No.1 in favour of the defendant No.2 as also
(iii) declaration that the said agreement at exhibit 103 is illegal, null and void. The learned trial Judge partly decreed the Suit on 05.02.2002 and directed legal representatives of defendant No.1 (defendants No.1A to 1D) to execute the sale deed of the property in dispute as also restrained them from disturbing the possession of the plaintiffs. The Suit against defendant No.2 was dismissed. Aggrieved by that decision, original

defendants No.1A to 1D preferred Appeal. By order dated 06.07.2005, the learned District Judge allowed the Appeal and dismissed the Suit for specific performance. The cross-objections preferred by plaintiffs against the findings recorded in respect of agreement (exhibit-103) executed in the year 1987 by defendant No.1 in favour of defendant No.2 were also dismissed. The learned District Judge clarified that the possession of the plaintiffs over the suit property shall not be disturbed until they are evicted by due process of law.

4. Learned Counsel appearing for the parties have tendered the consent terms dated 27.04.2015 duly signed by the plaintiffs and defendants No.1B to 1D and their Advocates. The same are taken on record and marked 'X' collectively for identification. Mr. Shah submits that appellants are present in the Court. Mr. Bandiwadekar submits that respondent No.1A died leaving behind respondents No.1B to 1D. General Power of Attorney Holder of respondents No.1B to 1D, Mr. Sunil Ramkisan Palod is present in the Court. Mr. Shah has tendered photocopies of Aadhar Card of appellants No.1 and 2 issued by the Government of India. Mr. Bandiwadekar has tendered photocopies of Identity Card issued by Election Commission of India of Mr. Sunil Ramkisan Palod (General Power of Attorney Holder of respondents No.1B to 1D) as also the General Power of Attorney dated 30.08.2014. The same are taken on record and marked 'Y' collectively for identification.

5. Learned Counsel appearing for the parties state that by the present consent terms, interests of the respondent No.2-defendant No.2 are not affected and rather are protected. They state that clause 1 of the consent terms provides for deleting respondent No.2 from the array of this Appeal. In view thereof, leave to delete respondent No.2 is granted.

Amendment shall be carried out forthwith.

6. By order dated 23.07.2007, the Appeal was admitted on the substantial questions of law as formulated therein. Perusal of the consent terms shows that defendants No.1B to 1D have agreed to handover possession of 1 Hector 26 Ares land from Gat No.97 as per the boundaries in clause 2 thereof. Defendants No.1B to 1D will retain balance area of 2 Hectors 40 Ares as per the boundaries set out in clause 3 thereof. Clause 4 thereof requires defendants No.1B to 1D to obtain necessary permission of the Competent Authority for executing the sale deed in terms of clause 2. Clause 5 provides that parties will make necessary application to the concerned authority for sub-division of the plot as per clauses 2 and 3 of the consent terms.

7. Learned Counsel appearing for the parties state that the impugned decrees passed by the Courts below may be substituted in terms of the consent terms.

8. After perusing the consent terms, I am satisfied that the controversy between the parties is amicably and lawfully settled in terms of the consent terms. In view thereof, the impugned judgments and decrees passed by the Courts below are set aside. The Suit stands disposed of in terms of the consent terms duly signed by the appellants and respondents No.1B to 1D and decree shall be drawn accordingly. It is expressly clarified that the rights of the respondent No.2 shall not be adversely affected by the consent terms. Second Appeal stands allowed with no order as to costs. Order accordingly.

CIVIL APPLICATION NO.542 OF 2015

Heard Mr. Shah, learned Counsel for applicants and

Mr. Bandiwadekar, learned Counsel for respondents No.1B to 1D.

2. This is an application for bringing legal representatives of respondent No.2, since deceased, on record after condoning the delay of 2 years and 263 days in filing the application. As per clause 1 of the consent terms, appellants have deleted respondent No.2 from the Second Appeal.

3. In view thereof, this Application does not survive and the same is disposed of as such.

(R. G. KETKAR, J.)

Minal Parab