

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 91 of 2009

Ranjit Pushpashil Gaekwad
(since deceased through his LRs)
1A.Mrs.Manisha Rajeet Gaekwad
and others .. Appellants

Versus

Sawalaram Shankar Lonkar,
(Since deceased through his LRs)
1A.Smt. Pravhavati Savlaram Linkar
and others ..Respondents

Mr. U.P.Warunjikar, Advocate for the appellants
Mr. S.V.Sadavarte, Advocate for Respondent Nos.1A
to 1D

CORAM : R.K.Deshpande, J.
DATED : 23rd JUNE, 2015.

P.C.

The appellants in this appeal are the legal representatives of the original plaintiff No.2 Sou. Vidyadevi Pushpashilrao Gaekwad in Special Civil Suit No. 54 of 1989. The said suit was decreed on 15th October, 1999 by the trial Court and the operative portion of the order is reproduced below.

- "1) Suit for redemption of mortgage dated 6.5.1965 is decreed with cost against defendant No.1.*
- 2) Defendant no.1 is directed to handover the possession of the suit lands on or before 30.11.99 to all plaintiffs and defendant no.3.*
- 3) Plaintiffs and defendant No. 3 are entitled to*

get Rs.6000/- (six thousand) from defendant No. 1 by way of damages with costs and with 6% interest from 6.5.75 till recovery of amount.

- 4) Inquiry for mesne profit is permitted from the date of suit (i.e. from 24.4.1978) till delivery of possession of suit lands, as per C.P.C. Order 20 Rule 12 (c).*
- 5) No any relief against defendant no.2.*
- 6) Decree be drawn up accordingly.*

The suit for redemption of mortgage dated 6.5.1965 was decreed against the defendant no.1 who was directed to hand over the possession of the suit lands to the plaintiffs and the defendant No.3. The plaintiffs and defendant no. 3 are held entitled to get Rs.6,000/- from the defendant no.1 by way of damages and costs with 6% interest from 6.5.1975 till recovery of the amount. Inquiry into mesne profit is also directed to be made.

2] Civil Appeal No. 124 of 1999 was preferred only by the original defendant no.1 - Savlaram Shankar Lonkar. The plaintiff No. 2 Sou. Vidyadevi Pushpashilrao Gaekwad, who was joined as respondent no. 2 in the said appeal, expired during the pendency of the said appeal. The appellants were brought on record as her legal representatives as per the order dated 20.03.2001 passed in the said appeal. Except the appellants in this second appeal, the original defendant no.1 who was the sole appellant in Civil Appeal No. 124 of 1999 settled the matter with all other plaintiffs. The lower appellate Court recorded the fact that the appellants are not

parties to the compromise, but passed an order on 25.06.2003 recording the compromise and disposing of the matter. This second appeal is preferred by the legal heirs of the original plaintiff No.2 challenging the compromise accepted by the lower appellate Court. All these facts are not disputed in this second appeal.

3] The learned counsel appearing for the respondent no.1 who is the original defendant no.1 accepts the proposition that the compromise recorded by the lower appellate Court does not bind the appellants who are the legal representatives of the original plaintiff no.2. In view of this, the compromise recorded and accepted by the lower appellate Court on 25.06.2003 does not bind the appellants and the decree passed by the trial Court on 15.10.1999 in Special Civil Suit No. 54 of 1989 becomes executable at their instance, being the legal representatives of the original plaintiff no.2. The question of the present appellants challenging the compromise accepted by the lower appellate Court on 25.06.2003, therefore, does not arise. With this clarification, the second appeal stands disposed of.

4] The parties shall, however, be at liberty to raise all the questions touching the executability of the decree passed by the trial Court, as are permissible in law. However, the executing Court shall neither reopen nor shall deal with the question of binding nature of compromise dated 25.06.2003 upon the appellants, which is concluded by clarification given in this order.

5] In view of above, the second appeal stands disposed of and the Civil Application (S) No. 248 of 2015 does not survive. The same is, therefore, disposed of.

(R.K.DESHPANDE, J.)

Rvjalit