

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

SECOND APPEAL NO. 971 OF 2012

Namdeo Laxman Gadhawe & Ors. ... Appellants

V/s.

Gangubai Ramesh Gawade & Ors. ... Respondents

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Dr. R. A. Thorat, Senior Advocate i/b. Mr. Sandeep Salunkhe,
Advocate for the Appellants.
Mr. Abhijit P. Kulkarni, Advocate for Respondent No.1.
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CORAM : R. K. DESHPANDE, J.

DATED : AUGUST 12, 2015.

P.C.

In Special Civil Suit No.55 of 2000, the trial Court passed a decree on 30th April, 2007 for partition and separate possession and also granted the declaration that sale - deed dated 31st January, 2006 is not binding upon the plaintiff and the defendant nos. 1 to 4 are perpetually restrained from transferring the suit lands to others. In Regular Civil Appeal No. 49 of 2007, though the Appellate Court dismissed the Appeal on 27th June, 2012, it modified clause 5 of the operative portion of the trial Court and the defendant nos. 1 to 3 are perpetually restrained from interfering / alienating the suit lands to others till final

partition decree. The cross - objection of the respondent no. 2 / original defendant no. 4 was allowed and the finding was recorded on issue no.3 in the affirmative. On issue no. 5, the finding was recorded in the negative and prayer Clause 9(c) of the plaint was rejected.

2 Before this Court, the appellant nos. 1 to 3 are the original defendant nos. 1 to 3, whereas, appellant no.4 is the defendant no.19, the purchaser of the property. The respondent no.1 is the original plaintiff. The parties have filed minutes of order dated 12th August, 2015. The contents of which are reproduced below:

“1. The Appellants i.e. Original Defendant No(s) 1, 2, 3 and 19 have filed the present Second Appeal challenging the Judgment and Decree dated 26th June, 2012 passed by the District Judge, Baramati in Regular Civil Appeal No. 49 of 2007 and the Judgment and Decree dated 30th April, 2007 passed by C.J.S.D., Baramati in Special Civil Suit No. 55 of 2000.

2 *Present Second Appeal can be disposed of at the admission stage by the consent of parties on the following terms by modifying the Decrees*

passed by the Courts below to the extent of the shares of Plaintiff i.e. Respondent No.1 herein and the Defendant No(s) 1 to 3 i.e. Appellant No(s) 1 to 3 herein.

3. *The findings of facts recorded by the Courts below about the nature of suit properties being joint family properties and the entitlement of Plaintiff i.e. Respondent No.1 to claim share in all the suit properties is confirmed.*
4. *Findings of the Courts below as regards the share of Plaintiff and Defendant No(s) 1 to 3 is set aside and it is held that the Plaintiff i.e. Respondent No.1 herein and Defendant No(s) 1 to 3 i.e. Appellant No(s) 1 to 3 herein are entitled for equal share i.e. 1/4th share each in all the suit properties.*
5. *The Decree passed by the Courts below i.e. the Judgment and Decree dated 30th April, 2007 passed by the C.J.S.D., Baramati in Special Civil Suit No. 55 of 2000 and the Judgment and decree dated 27th June, 2012, passed by the District Judge, Baramati in Regular Civil Appeal No.49 of 2007 are modified in following manner:*
 - A *The Respondent No.1 i.e. Original Plaintiff and Defendant No(s) 1 to 3 i.e. Appellant*

No(s) 1 to 3 herein are entitled for equal share in all the suit properties i.e. 1/4th share each.

- B. The suit properties as mentioned in Paragraph No.1 of the Plaint of Special Civil Suit No.55 of 2007 shall be divided by metes and bounds as per the share mentioned in clause 'A' hereinabove equally and in equitable manner.*
- C. It is declared that the sale deed dated 19.08.2000 executed in favour of Defendant NO. 4 by Defendants 1 to 3 and Sale Deeds dated 28.09.2005 and 31.01.2006 executed by the Defendant No(s) 1 to 3 in favour of Defendant No(s) 19 are legal and valid and binding on the vendors i.e. Defendants 1 to in respect thereof but are not binding on the Plaintiff i.e. Respondent No.1 herein and she is entitled to 1/4th separate share in the suit properties as per metes and bounds and in equitable manner.*
- D. The Decree passed by the Courts below as regards perpetual injunction restraining original Defendant No(s) 1 to 3 i.e. Appellant No(s) 1 to 3 from*

transferring/alienating the suit lands to others till final partition decree is hereby set aside.

E. The Decree be drawn up accordingly and the Trial Court is directed to send the same to the Collector for partitioning the Agricultural lands.

F. The Appellants and Respondent No. 1 are directed to approach appropriate authority for effecting partition of suit lands by metes and bounds and in equitable manner.”

3 The minutes are signed by the learned counsel appearing for the appellant and the respondent no.1. Hence, the aforesaid minutes of order shall bind only to the appellants and the respondent no.1. The decree passed by the trial Court as well as the Appellate Court stand modified in the aforesaid terms.

JUDGE