

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

SECOND APPEAL NO. 1051 of 2012

- 1] Ballappa Sidhappa Guddodagi
age : 36 years, Occ. Agriculture,
- 2] Pirappa Sidhappa Guddodagi,
age : 35 years, Occ. Agriculturist,
- 3] Smt. Basavva Sidhappa Guddodagi,
Age : 70 years, Occ. Household.
- 4] Satyappa Bhimanna Hippargi,
Age : 33 yeas, Occ. Agriculturist,

All residing at Sindhur, Tal. Jath,
Distt. Sangli ..

APPELLANTS
Org. Third Party
Objectors

.. **Versus** ..

- 1] Smt. Bhagavva Nagappa Magdum,
deceased through her legal heirs.
- 1a] Smt. Bhouravva Mallappa Balikai,
age : 65 years, Occ. Household.
- 2] Sou. Amavva Daryappa Adalhatti,
Age 69 years, Occ. Household,
- 3] Daryappa Ramling Adalhatti,
Age : 71 years, Occ. Agriculturist,
- 4] Shri Basappa Daryappa Adalhatti,
Age : 41 years, Occ. Agriculturist,
- 5] Smt.Umavva Satappa Hippargi,
Age : 64 years, Occ. Household,

- 6] Raju Satyappa Hippargi,
Age : 39 years, Occ. Agriculturist,
- 7] Sou. Suvarna Raju Hippargi,
Age : 69 years, Occ. Household,
- 8] Shri Basappa Satyappa Hippargi,
Age : 69 years, Occ. Agriculturist,
- 9] Shri Annappa Bassappa Hippargi,
Age 34 years, Occ. Agriculturist,

All residing at Sindhur, Tal. Jath,
District – Sangli . .

RESPONDENTS
No.1 Org. Plaintiff.
Nos. 2 to 9 Org.Defts

...

Mr. Nagesh Y. Chavan, Advocate, for appellants.
Mr. S.D.Dharmadhikari, Advocate for Respondents

CORAM : R.K.Deshpande, J.
DATED : 30th JUNE, 2015.

ORAL JUDGMENT

1] In Regular Civil Suit No. 8 of 1995, the trial Court passed a decree on 27.08.1999. The operative portion of the order passed by the trial Court is reproduced below;

- (1) *Suit is decreed with costs, as under:*
- (2) *The plaintiff is entitled for the possession of the suit land bearing Gat No. 357 admeasuring - 7-Hectares 51-R situated at villagae Sindur, Tq. Jath, Distt. Sangli.*
- (3) *Defendant Nos. 1 to 8 are hereby perpetually*

restrained from interfering and obstructing in the peaceful possession of the suit land after the possession is delivered to the plaintiff.

- (4) *Separate enquiry under Order-XII, Rule-12(1)(c) of the Code of Civil Procedure for mesne profits, be held.*
- (5) *Decree be drawn up accordingly.*

2] The decree passed by the trial Court was the subject matter of execution in Regular Darkhast No. 55 of 2009. The appellants before this Court, who were not the parties to the suit, raised an objection that they are the owners of Survey No. 109 admeasuring 8 acres and 24 gunthas in one sale deed and 5 acres in another sale deed. They are not disputing the sale deed dated 27.05.1953 executed in favour of the decree holder to the extent of 14 acres of land out of Survey No. 109. In execution, the decree holder sought possession of the entire Gat No. 109, which consist of land belonging to the present appellants. The trial Court rejected the objection below Exh.23 on 13.03.2012 and the lower appellate Court has dismissed the Regular Civil Appeal No. 151 of 2012 on 29.10.2012. Hence, this second appeal by the objectors.

3] **Admit** on the following substantial questions of law.

Whether the Courts below were right in rejecting the objections raised by the present appellants without permitting

them to lead evidence in support of their objections?

The learned counsel appearing for the respondents waives service of notice.

The learned counsel appears for respondent no.1 - decree holder and it is not necessary to issue notices to the other respondents, who are not the decree holders.

The matter is heard finally by consent of the learned counsels appearing for the parties.

4] The claim of the appellants-objectors is based upon two registered sale deeds of the same date i.e. 24.05.1948 in respect of the land which is part and parcel of Survey No.109. Similarly, the decree holder is entitled to possession of the land Survey No. 109 (earlier Gat No. 357), admeasuring 7 hectare and 51R. The appellants were not party to the said suit and in their absence, the decree holder would not be entitled to possession of the entire Survey No. 109 (Gat No. 357), admeasuring 7 hectare and 51R. Prima facie, para 11 of the judgment and decree passed by the Trial Court in Regular Civil Suit No. 8 of 1995 indicate that the sale deed dated

27.05.1953 in favour of the decree holder in respect of Survey No. 109/1 is to the extent of 14 acres of land. However, this is the subject matter of objection raised by the appellants to be decided in the execution proceeding. The Courts below could not have, therefore, proceeded to reject the objections without framing an issue and permitting the parties to lead evidence. The courts below have, therefore, committed an error of law. The substantial question of law is, therefore, answered accordingly.

5] In the result, the second appeal is allowed. The judgment and order dated 13.03.2012 passed by the trial Court below Exh. 23 in Regular Darkhast No. 55 of 2009, as has been confirmed in Regular Civil Appeal No. 151 of 2012 by the lower appellate Court on 29.10.2012, are hereby quashed and set aside. The matter is remitted back to the executing Court to frame appropriate issue and permit the parties to lead evidence and thereafter to proceed to decide the matter in accordance with law.

Needless to say that this Court has not adjudicated on the merits of the matter and all contentions are left open to be decided without being influenced by any of the

observations made by this Court.

The parties to appear before the executing Court on 27th July, 2015.

The executing Court to decide the objections within a period of eight months from the date of first appearance of the parties before it. No order as to cost.

(R.K.Deshpande, J.)

...

Rvjalit/P.A.