

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.455 of 2012

(Smt. Sundarabai wd/o. Maroti Amrutkar and Ors. vs. Smt.Rukmabai wd/o. Vithal Amrutkar and Ors.)

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

*Mr.W.G.Paunikar, Adv. for the appellants.
Mrs.U.A.Patil, Adv. for L.Rs. Nos.5 (a to h).*

CORAM : A.P.BHANGALE, J.

DATE : 3.9.2015.

Heard.

The grievance of the appellant is that the first appellate Court, which is final Court of facts, did not frame the substantial question of law which arose for determination. According to the learned Counsel for the appellants, the first appellate Court ought to have given due weightage to the Compromise pursis filed before the Revenue Authority. Pursis dt. 10.6.1993 was produced before the learned Sub-Divisional Officer, Nagpur whereby Vithal Amrutkar and Laxmibai Amrutkar had agreed that the plaintiff relinquished their rights in respect of the suit house. They had, in fact, requested that name of Smt. Sundarabai and Purshottam be entered in the Revenue Record and names of Vitthal Amrutkar and Laxmibai Amrutkar be deleted from the revenue record. This important fact was ignored by the learned first appellate Court while deciding the First Appeal. There was no issue

framed in this regard even by the trial Court, though, according to the learned Counsel for the appellants, the said facts were brought to the notice of the Courts below. In this regard, substantial question of law is raised as to whether the first appellate Court erred in not giving due importance to the role of original defendant nos. 1 and 2 pursuant to Compromise Deed, dt.8.9.1994 (Exh.43), Written Statement (Exh.10). It is, therefore, prayed that the first appellate Court ought to have framed point for determination in this regard for decision of that appeal as the Court of finding facts.

There appears substance in the above submission. Instead of keeping the Second Appeal pending after admitting the same for years or long time, it would be worthwhile to request the first appellate Court to address itself on the question as to whether there was compromise recorded by Vithal Amrutkar and Laxmibai Amrutkar in the Revenue proceedings bearing Revenue Appeal No.4/RTS/64/92 on 10.6.1993 after considering the said revenue proceedings in respect of mutation proceedings between the parties and recording findings as to whether there was such compromise and what is the effect of such compromise upon controversy in the suit if it was entered into in writing during the course of Revenue proceedings before the competent Revenue Authority. Therefore, the impugned Judgment and Order is set aside with observation that the learned first Appellate Judge shall address himself to all the relevant facts which may be brought to his notice. The finding of facts, if necessary, be recorded or called for from the trial Court and thereafter,

the First Appeal be decided in accordance with law.

With these observations, the proceedings are remanded back to the first Appellate Court to address itself afresh on the facts to be decided after recording findings of facts. No order as to costs.

Parties shall appear before the first Appellate Court on 7.10.2015.

JUDGE

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