

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

***SECOND APPEAL NO. 333 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 791 OF 2015***

1. Baban Bhauso Chougule & ors.
2. Arvind Bhauso Chougule
3. Smt.Indubai Bhauso Chougule
Residents of -
Chinchwad, Tal. Shirol, Dist.Kolhapur. ... Appellants/applicants.

v/s

1. Shri Nana Nemisha Chougule
R/o. Sonhira Bldg., Behind S.T.stand,
10th Lane, Jaysingpur, Tal. Shirol,
Dist. Kolhapur.
2. Shri Shamrao Annappa Chougule
(since deceased, through legal heirs)
(a) Smt.Malutai Shamrao Chougule & ors. ... Respondents

Mr.V.B. Rajure for the appellants/applicants.
Ms.Varsha Palav for Resp. No.1.
Mr.Vaibhav Gaikwad for Resp. Nos.2A, 2D, 3(1) to 3(3), 4 & 6. (Resp.
No.7 deleted).

Coram: N.M. Jamdar, J.

Dated: 4 May 2016

ORAL ORDER:

Learned counsel for the Appellants states that the Appellants will delete Respondent No.7. The said deletion is permitted at the risk of the Appellants.

2 Heard learned counsel for the parties.

3 Admit, on the following substantial questions of law :

(I) Whether the Courts committed an error in coming to the conclusion that the Appellants did not give any option and was only interested in prolonging the litigation, in view of the specific statement made by the appellants in the say to the report of the Court Commissioner.

4 By consent of parties, the appeal is taken up for final disposal forthwith. Paper-book dispensed with.

5 The Appellants challenge the judgment and order passed by the District Judge, Jaisingpur, in R.C. Appeal No.4 of 2014, dated 27 January 2015, dismissing the appeal and confirming the Final Decree Application No.4 of 2007 passed by the civil Judge, Junior Division, Jaysingpur, on 29 November, 2013.

6 The Respondents filed a suit for partition of his 1/3 share in the suit property. The suit was decreed on 26 June 2006. The decree attained finality as no appeal was preferred. Final decree application was filed by the Respondents. On 2 February 2012, the learned Civil Judge appointed a Court Commissioner. The report of the Court Commissioner was filed. The Appellants submitted their objections. The learned Civil Judge passed an order that the Respondents chose Option No.1 given by the Court Commissioner. The learned Civil Judge held that the Appellants did not give any option and, therefore, the option given by the

Respondents has to be confirmed. This order was confirmed in appeal.

7 The second appeal came up on board on 7 May 2015 when R.G.Ketkar, J. passed the following order :

'P.C.:

Not on Board. At the request of Mr. Rajure, learned Counsel for appellants, taken up in the production Board.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908, the original defendants No.1 to 3 have challenged the judgment and decree dated 29.11.2013 passed by the learned Joint Civil Judge, Junior Division, Jaysingpur in Final Decree Application No.4 of 2007 as also the judgment and decree dated 27.01.2015 passed by the learned District Judge-1, Jaysingpur in Regular Civil Appeal No.4 of 2014. By these orders, the Courts below have disposed of the Final Decree Application No.4 of 2007.

3. Mr. Rajure invited my attention to paragraph 7 of the Trial Court judgment as also paragraph 8 of the District Court judgment. He submitted that the Courts below recorded that the original opponents No.1 to 3 did not exercise any option. He submitted that this is factually incorrect and contrary to record. In the report dated 15.02.2013 submitted by the Court Commissioner, he has suggested 3 options. In paragraph 10 of the say filed by opponents No.1 to 3 at exhibit-54 to the Court Commissioner's report, they have, without prejudice to the rights and contentions, accepted option No.3. Mr.Rajure reiterated that appellants herein are ready and willing to accept option No.3 as suggested by the Court Commissioner.

4. In view of these submissions, issue notice to respondents, returnable on 24.06.2015. In the meantime, subject to appellants' neither creating third party interest nor parting with possession, there shall be ad-interim order in terms of prayer clause (b) of Civil Application No.791 of 2015.'

8 Learned counsel for the Appellants has drawn my attention to paragraph No.10 in the objections filed by the Appellants to the report of the Court Commissioner, wherein it is stated that the Appellants have accepted Option No.3. Learned counsel for the Respondents submitted that the option as given, is a qualified option subject to various conditions. Learned counsel for the Appellants further submits that the option given in paragraph 10 is not a qualified option and the Appellants are ready to accept Option No.3 given by the Court Commissioner as it is.

9 In the circumstances, since both the Courts have proceeded on the footing that the Appellants did not exercise any of the option suggested by the Court Commissioner and in view of the order passed by this Court on 7 May 2015, the proceedings will have to be remanded to the learned Civil Judge to consider the options of both the Respondents and the Appellants as Option Nos.1 and 3, respectively.

10 Learned counsel for the Respondents states that the proceedings be expedited. This request is reasonable.

11 Accordingly, the second appeal is allowed. The judgment and order passed by the District Judge, Jaisingpur, in R.C. Appeal No.4 of 2014, dated 27 January 2015, is quashed and set aside.

12 The Final Decree Application No.4 of 2007 stands restored to file, only with a limited extent of considering Option No.1 accepted by the Respondents and Option No.3 as accepted by the Appellants, to the report of the Court Commissioner. The learned Civil Judge will accordingly

decide the final decree application. Since this question is a limited one, the learned Civil Judge will dispose of it within a period of four months from the date the parties appear before him.

13 Parties will appear before the learned Civil Judge on 13 June 2016.

14 The appeal is disposed of in above terms. No costs.

15 In view of disposal of the second appeal, the civil application also does not survive and is disposed of.

(N.M. JAMDAR, J.)