

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 156 OF 2010**

Pandit s/o Vitthal Ghadge,  
Age: 33 years, Occu: Agriculture,  
R/o. Sonegaon,  
Tq. & Dist. Osmanabad

..APPELLANT  
(orig.deft.no.3)

VERSUS

1. Ramrao Chandrahan Mane,  
Age: 56 years, Occu: Nil,  
R/o. Sonegaon,  
Tq. & Dist. Osmanabad  
(abated vide Court's order  
dtd. 10/06/2010)
2. Goroba Bapurao Mane,  
(since deceased thr. L.Rs.)
- 2-a. Parvatibai Goroba Mane,  
Age: 81 years, Occu: Household,  
R/o. Sonegaon,  
Tq. & Dist. Osmanabad  
(abated vide Court's order  
dtd. 10/06/2010)
- 2-b. Laxman Goroba Mane,  
Age: 46 years, Occu: Agriculture,  
R/o as above
- 2-c. Kaushlabai Trimbak Ghadge,  
Age: 53 years, Occu: Household,  
R/o as above
- 2-d. Sumitra Chandrabhan Ghadge,  
Age: 53 years, Occu: Household,  
R/o as above
- 2-e. Krishnabai Bibhishan Takbhate,  
Age: 51 years, Occu: Household,  
R/o. Shripati Pimparti, Tq. Barshi,  
Dist. Solapur
- 2-f. Ayedaya Prakash Jadhav,  
Age: 49 years, Occu: Household,

(2)

R/o. Hattij, Tq. Barshi,  
Dist. Solapur  
(abated vide Court's order  
dtd. 10/06/2010)

3. Shahu Bapurao Mane,  
(since deceased, thr. L.Rs.)
- 3-a. Popat Shahu Mane,  
Age: 41 years, Occu: Business &  
Agriculture, R/o. Sonegaon,  
Tq. & Dist. Osmanabad
- 3-b. Mandakini Sahebrao Patil,  
Age: Major, Occu: Household,  
R/o. Hingangaon, Tq. Indapur,  
District Pune
- 3-c. Nirmala Rajaram Kale,  
Age: Major, Occu: Household,  
R/o. Uplawat, Tq. Karmala,  
District Solapur
- 3-d. Usha Astik Ghavti,  
Age: Major, Occu: Household,  
R/o. Fandari, Tq. Barshi,  
Dist. Solapur
4. Yogiraj Anyaba Mane,  
(since deceased, thr. L.Rs.)
- 4-a. Sonabai Yogiraj Mane,  
Age: 76 years, Occu: Agriculture,  
R/o Yedshi, Tq. & Dist. Osmanabad  
(abated vide Court's order  
dtd. 10/06/2010)
- 4-b. Vishwanath Yogiraj Mane,  
(since died)
- 4-c. Nanasaheb Yogiraj Mane,  
Age: 59 years, Occu: Agriculture,  
R/o. Yedshi, Tq. & Dist. Osmanabad
- 4-d. Indibai Gaibi Anpat,  
Age: 56 years, Occu: Household,  
R/o. Sonegaon,  
Tq. & Dist. Osmanabad

(3)

- 4-e. Pandurang Yogiraj Mane,  
Age: 54 years, Occu: Agriculture,  
R/o as above
- 4-f. Arvind Yogiraj Mane,  
Age: 51 years, Occu: Agriculture,  
R/o as above  
(abated vide Court's order  
dtd. 10/06/2010) ..(orig.plaintiffs)
5. Suryakant Vitthal Ghadge,  
Age: 32 years, Occu: Agriculture,  
R/o. Sonegaon, Tq. & Dist. Osmanabad
6. Mohan Vitthal Ghadge,  
Age: 35 years, Occu: (orig.pltff 1&2)  
R/o as above ..RESPONDENTS

Mr A. V. Hon, Advocate for appellant;  
Mr R. K. Ashtekar, Advocate for respondent Nos. 1-a, 1-b, 2-b to 2-e, 3-a to 3-d;  
Mr M. P. Tripathi, Advocate for respondent Nos.3-a to 3-d;  
Mr P. M. Gaikwad, Advocate for respondent Nos.5 & 6

**CORAM : NITIN W. SAMBRE, J.**

**DATE : 9th June, 2017**

### **ORAL ORDER**

This second appeal is by original defendant No.3, who has sold the suit property.

2. The facts, necessary for deciding the present appeal, are as under: -

3. One Natiba Mane was blessed with two sons, namely, Bapurao and Anyaba. The plaintiffs claim to be the legal representatives of Bapurao, who was married to Indirabai.

(4)

4. It is claimed that the lands Gut No. 314 and 309 had come to the share of present respondent Nos. 1 and 2 - plaintiffs and defendant No.4. Taking undue advantage of relationship between the parties, have transferred the land in favour of defendant Nos. 1 to 3. The present appellant before this Court is defendant No.3 , who is a purchaser of part of the suit property.

5. Amongst other, all properties that were partitioned between Bapurao and Anyaba was, land Gut No. 79 admeasuring 32 Acres. Northern half portion had come to the share of Bapurao, which was further subdivided in various strips, being Survey Nos. 79/2/1, 79/3/3 and 79/4/4, etc., whereas southern half portion had come to the share of deceased Anyaba, which was given survey No.79/1.

6. It is claimed that Ramrao, grandson of Bapurao filed Regular Civil Suit No.79/1968 for partition and possession, in which there was a compromise decree and land Gut No. 79/1 and 79/3 were allotted to the share of Indirabai, which after consolidation was given Gut No. 314 and 309. It is claimed that it is defendant No.4-Yogiraj, after aforesaid proceedings, in connivance with the then Revenue Officer, got mutated his name in the aforesaid property, which he transferred to defendant No. 1 to 3 vide sale deed dated 4<sup>th</sup> June, 1987, which has prompted the plaintiffs-present respondents to file suit for injunction and declaration.

7. The defence of original defendant No. 4 - Yogiraj at Exh.33 is that a collusive compromise decree for partition was passed in Regular Civil Suit No. 79/1968. He claimed that it is after partition of Survey No.79, part of northern portion has come to his share.

8. The present appellant-defendant towed the same line of defence as that of defendant No.4.- Yogiraj.

9. After the issues came to be framed at Exh 41, the learned Trial Court held that the decree as prayed, is required to be granted partly and ordered declaration that the sale deed dated 4<sup>th</sup> June, 1987, executed by defendant No.4 - Yogiraj in favour of defendant Nos. 1 to 3, in regard to land Gut No. 314, admeasuring 2 H 4 Are, at Village Sonegaon, is null and void and not binding on plaintiffs, however, dismissed the claim for injunction.

10. The defendant Nos. 1 to 3 preferred Regular Civil Appeal No. 116 of 1999 before the Court of learned District Judge, Osmanabad, who upon appreciation of the record, dismissed the same. As such, this second appeal.

11. Mr Hon, learned Counsel appearing on behalf of appellant, while trying to make out a case, would urge that the Court has incorrectly relied upon the compromise decree, passed in Regular Civil Suit No. 79 of 1968. According to him, land Survey No. 79/1 and 79/3 were never subject matter of said suit and as such, it cannot be inferred that the said property was covered by the compromise decree in the said suit in favour of the plaintiffs-respondents.

12. Per contra, learned Counsel appearing on behalf of respondents would urge that the partition cannot be re-opened at the behest of present appellant, who is the purchaser of the property. According to him, both the Courts below, in detail, have

(6)

appreciated the findings recorded and dismissed the appeal of the appellant. According to him, the appeal lacks merits, which is against concurrent findings and accordingly same be dismissed.

13. Considered rival submissions.

14. At the outset, it is required to be noted that the present appellant is the purchaser of the disputed property, who has entered into the shoes of his vendor i.e. defendant No. 4. But for a plea that the compromise decree passed in Regular Civil Suit No. 79 of 1968 is not binding and the suit property was not subject matter of the said suit, no material or evidence has been brought on record by defendant No. 4 or original defendant Nos. 1 to 3, who are purchasers, to substantiate their claim.

15. Apart from above, fact remains that the compromise decree was not subject matter of challenge at the behest of any of the parties. Rather, the compromise decree passed in Regular Civil Suit No.79 of 1968 is relied upon for the purpose of decreeing the suit in favour of respondents-plaintiffs.

16. It is then to be noted that of the parties to the suit and present appeal, vide order dated 10<sup>th</sup> June, 2010, appeal stands abated against respondent No. 1 – Ramrao, respondent No. 2-a – Parvatibai, 2-f - Ayedaya, 4-a - Sonabai and 4-f Arvind.

(7)

17. Civil Application No. 2737 of 2010 was moved for seeking injunction in favour of defendant No. 3.

18. Civil Application No. 8718 of 2016 was moved seeking permission to bring on record the legal representatives of respondent No. 2-c, namely, Kaushalyabai and also for issuing notice to proposed legal representatives 1-a and 1-b. Another Civil Application No. 1768 of 2016 came to be moved with a prayer for condonation of delay of 1863 days caused in filing an application for setting aside the order of abatement passed on 24<sup>th</sup> November, 2010 and bringing legal representatives of respondent Nos. 1, 2-a., 2-f, 4-b and 4-f on record.

19. Civil Application No. 15995 of 2016 was moved for fresh notice to respondent Nos. 1-a and 1-b.

20. The fact remains that Mr Ashtekar, learned Counsel appeared for respondent Nos. 1-a and 1-b and as such said application has to be disposed of as infructuous to that extent. However, notices to respondent Nos. 2-c-i and 2-c-ii were remained unserved. The notices remained awaited for respondent No.3-c on the said application, by which delay of 1863 days was sought to be condoned i.e. almost for more than five years.

21. If the contents of the said application are perused, the fact remains that the present appellant claims to be the owner through defendant No. 4 - Yogiraj and as such, being owner of adjoining land cannot be ignored to be having knowledge in respect of the land of the adjoining owner.

(8)

22. There is no convincing reason in the application seeking condonation of delay of more than 5 and ½ years .

23. In the aforesaid background, all aforesaid pending civil applications are dismissed.

24. So far as the conduct of the appellant from the aforesaid applications is concerned, Mr Ashtekar was appearing for respondent Nos. 2-b to 2-e, however, the legal representatives of respondent No. 2-f were not brought on record. Hence appeal stood abated against him. The abatement order dated 10<sup>th</sup> June, 2010 is not sought to be set aside by moving any application for bringing legal representative of all the deceased persons on record. In Civil Application No.8718 of 2016, legal representatives of respondent No. 2C and in Civil Application No. 1768 of 2016, Legal representatives of respondent Nos. 1, 2-a, 2-f, 4b and 4-f were sought to be brought on record without giving any convincing reason.

25. Perusal of the applications depict that same are moved in mechanical manner without justifying the delay of more than 5 and ½ years.

26. Since appeal already stood abated in 2010 against the respondent Nos. 2-a, 2-f, 4-a and 4-f, the appeal, in my opinion, abates as a whole.

27. In the backdrop of above referred observations, particularly inability on the part of the appellant to explain the delay and having accepted the decree against

(9)

some of the respondents, the appeal, in my opinion, abates as a whole and as such, same is liable to be dismissed.

28. There is one more reason i.e. the appellant cannot claim better right than his predecessor i.e. defendant No.4, who himself has failed to demonstrate his title to the suit property while raising the dispute about the compromise decree passed in Regular Civil Suit No. 79 of 1968.

29. In the aforesaid background, the appeal, which is against the concurrent findings, stands dismissed. In view of dismissal of appeal, all pending civil applications are accordingly disposed of.

**(NITIN W. SAMBRE, J.)**

sjk