

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.626 OF 1988

Shri. Vitthal Baburao Mhalaskar Appellants
(since deceased), thru' his heirs & LRs
Kalawati Vitthal Mhalaskar & Ors.

Vs.

Mr. Namdeo Mahadeo Dhore Respondents
(since deceased) by his legal heirs
Shridhar Namdeo Dhore & Ors.

Mr. Abhijit Kulkarni for the Appellants.
Mr. Dormaan J. Dalal i/by Sugandh B. Deshmukh for the Respondent
Nos. 1A to 1E.

Coram : N.M. Jamdar, J.
Date : 3 May 2017

P.C.:

The matter was adjourned from time to time on the ground of settlement. The preliminary understanding of the parties was recorded in the order dated 27 April 2017.

2 The learned counsel for the parties state that they have finalised the consent terms, which have been signed by the Appellants

and Respondents' power of attorney holder. Subject to the verification of power of attorney by the Registry, the consent terms are taken on record and marked "X".

3 I have gone through the consent terms. The proceedings arise from the suit filed for specific performance of an agreement. In the consent terms, the parties have agreed that the specific performance as granted by both the Courts will stand modified to the extent provided in the shaded red portion of the map as annexed to the consent terms. The parties have worked out modalities of executing necessary agreements in that regard. As far as the original owner is concerned, the same is not represented, however, he has executed a registered sale-deed on 24 October, 1974 in favour of the Appellants-original Defendant No. 4, which sale-deed has not yet been set aside.

4 For the sake of ready reference, the consent terms are reproduced as under.

1) The Respondent No. 1 Original Plaintiff had instituted present suit for specific performance of agreement of sale dated 15.04.1972 entered into by the Defendant Nos.1 to 3 with the Plaintiff who were the original owners of the Suit Property bearing Gat No. 137/A/12 admeasuring about 39 R. The said Suit Property was sold by original

Defendant Nos. 1 to 3 to Defendant No. 4 Shri. Vitthal Baburao Mhalaskar by registered sale deed dated 24.10.1974. Parties i.e. Respondent Nos. 1(A) to (E) heirs of Original Plaintiff and Appellants/heirs of Original Defendant No. 4 have agreed to settle dispute in present Second Appeal as under.

- 2) Respondent Nos. 1(A) to (E) heirs of Original Plaintiff agree and accept the sale deed dated 25.10.1974 executed by original owners in favour of Defendant No.4 Shri. Vitthal Baburao Mhalaskar i.e. father of present Appellant Nos. 1(a) to 1(d) which is in the possession of Appellants. It is agreed by Respondent Nos. 1(A) to (E) heirs of Original Plaintiffs that they will have no claim and/or any grievance in respect of the land subject matter of said sale deed dated 24.10.1974 save and accept an area admeasuring the 12 'R' of the Suit property referred herein below.*
- 3) Appellants have agreed and undertake to transfer way of sale deed of land admeasuring about 12 'R'*

*on Eastern side of suit land which is abutting Plaintiff's land Gat No. 136 running parallel to said Gat No. 136 and approximately extending up to 50 Fts. beyond boundary of their Gat No. 136 so that approximately ½ portion of total Western boundary of Gat No. 136/A/12 on Eastern Side of suit property will be available to both the parties. Said portion is shown in red as in A,B,C & D in the rough map annexed as **Annexure '1'** to the consent terms. The expenditure for registration of the sale said deed has to be borne by Plaintiffs i.e. Respondent Nos. 1(a) to 1(e).*

- 4) Appellants further agree and undertake to remove their encroachment from Plaintiffs' land viz. Gat No.136 (Part) which is on Eastern side of suit property Gat No.137/A/12 (particularly on eastern side of portion is shown in A,B,C & D in blue).*
- 5) Appellants agree and undertake to complete and fulfill the entire terms of settlement/consent within a period of 45 days from the date of passing final order by the Hon'ble High Court failing which they are put to notice that they may*

be liable for contempt of this Hon. High Court for any breach of undertaking, and further it shall also be open to the parties to pursue other appropriate legal remedies.

- 6) It is further clarified that the Encroached area mentioned above will be ascertained by parties by getting the suit land measured through Government Agency or Private Surveyor by sharing the said expenditure in equal proportion (50% of amount to be borne by Appellant and 50% amount to be borne by Respondent Nos. 1(a) to 1(e). The physical possession of the above stated 12 'R' of the suit property viz. Gat No. 137/A/12 as well as the portion encroached by the Appellants in Gat Nos. 136 (mentioned above) shall be handed over to the Respondent No.1 (a) to 1(e) immediately after the measurement and boundaries of the suit property are marked by the Surveyor.*
- 7) Both parties shall assist and co-operate with each other in effecting the entries of their names in the records of the respective Revenue Authorities.*

5 I do not find any impediment in taking the consent terms on record and pass an order thereupon. Needless to state that the consent terms will not permit the parties to override any provision of law nor they will binding on the persons who are not parties to the consent terms. Accordingly, the Second Appeal is disposed of in terms of the consent terms. Registry and the parties will take necessary steps to draw a decree in terms of the consent terms. All understandings are accepted.

6 All parties to act on an authenticated copy of this order.

(N.M. Jamdar, J.)