

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 749 OF 2016

IN

SECOND APPEAL NO. 737 OF 2015

Shivaji Shahu Bhore, (who has been wrongly]
described in L.C. As Shivaji Gena Bhore,] Applicant

IN THE MATTER BETWEEN PARTIES

Shivaji Shahu Bhore, (who has been wrongly]
described in L.C. As Shivaji Gena Bhore,] Appellant

Vs.

Dhanaji Shivdas Gund and others.] Respondents

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Mr. Abhijit P. Kulkarni, for the petitioner.

Mr. Manoj Badgular, for respondents No.2, 3A to 3D and 4, 8, 9, 10, 20 & 21.

Mr. Vinod Sangarikar i/b Mr. S.A. Tarale, for respondent No. 19.

Ms. B.R. Mangak i/b Ms. Shreddha Pawar, for respondent No.6.

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CORAM : R.G. KETKAR, J.

DATE : 5TH MAY, 2017.

P.C.

Not on board. At the request of Mr. Kulkarni, Civil

Application is taken up on board.

2. By this application, the applicant has prayed for recalling the order dated 6th May, 2015 passed in Second Appeal No. 737 of 2015 with C.A. No. 1119 of 2014 and reading and recording the consent terms between the applicant and respondents 6, 9, 10 and 19 and for taking the same on record with respective settlement deeds.

3. Learned Counsel for the respective parties have tendered the consent terms duly signed by the applicant and his Advocate as also by respondents No. 5A, 6,8,9,10 and 19 and their Advocates. Along with consent terms, they have annexed:-

[1] Settlement Deed dated 24th September, 2015 between applicant and respondents No. 8, 9 and 10. at Exhibit-D-1.

[2] Copy of the Settlement Deed dated 30th July, 2015 between respondent No.6 and respondents No. 8, 9 and 10 at Exhibit D-3.

[3] Settlement Deed dated 5th May, 2017 between respondents No.8, 9, 10 and respondent No.6 at Exhibit D-2.

[4] Copy of Settlement Deed dated 30th July, 2015

between respondent No.19 and respondents No. 6,8,9 and 10 at Exhibit-D-4.

[5] Power of Attroney dated 10th August, 2015 executed by respondents No. 8,9 and 10 in favour of Suryakanat Chandrakant Raut, son of respondent No. 10 for signing present consent terms so also above copy of the settlement deed dated 29th July 2015 between respondent No.6 and 1 at Exhibit D-5.

[6] Copy of the settlement Deed dated 29th July, 2015 between respondent No.6 and respondent No.1 at Exhibit-D-6.

4. Consent terms between applicant and respondents No. 5A, 6, 8, 9, 10 and 10 along with Exhibit D-1, D-2, D-3, D-4, D-5 and D-6 are taken on record and marked as Exhibit A colly for indentification.

5. Mr. Kulkarni submits that the applicant is present in the Court. He has tendered photocopy of the Identity Card issued by the Election Commission of India which is taken on record and marked as 'B' for identification. Mr. Kulkarni states that respondent

No.1 is husband of respondent No.5 and is also her power of attorney. He is present in the Court. He has tendered photocopy of Identity Card issued by Election Commission of India. The same is taken on record and marked 'C' for identification. Ms. Mangak states that respondent No.6 is present in the Court. She has tendered photocopy of his Aadhar Card, which is taken on record and marked as 'D' for identification. Mr. Badgujar appears for respondents No. 8,9,10 and 19. He states that Suryakant chandrakant Raut son of respondent No. 10 and who is power of attorney holder of respondents No. 8 to 10 is present in the Court. He has tendered photocopy of his Aadhar card, which is taken on record and marked 'E' for identification. He further states that respondent No. 19 is also present in the Court. He has tendered photocopy of his Identity Card issued by Election Commission of India which is taken on record and marked 'F' for identification.

6. The parties admit and confirm correctness of the consent terms. Learned Counsel for the applicant and respondents No. 5-A, 6,9,8, 10 and 19 submit that consent terms may be read and recorded and decree passed by the District Judge in Regular Civil Appeal No. 151 of 2003 be modified to the extent of shares of

the parties in the consent terms.

7. Mr. Kulkarni further submitted that clause 3 of the consent terms provides that these consent terms are not affecting the terms of agreement and consent terms filed in Second Appeal No. 737 of 2015 between the applicant and respondents No. 1, 2, 3(A) to 3(D), 4, 5A, 19 and 20 on 6th May, 2016. Learned Counsel for the parties submitted that order passed by the learned District Judge be modified in terms of consent terms. Undertaking given in the consent terms may be accepted.

8. After perusing the consent terms, I am satisfied that controversy between the applicant and respondents No. 5A, 6, 8, 9, 10 and 19 is lawfully settled. As per clause (3), these consent terms are not affecting the terms of agreement and consent terms filed in the appeal between Applicant and Respondents No. 1, 2, 3A, 3B, 3C, 3D, 4, 5A, 19 and 20 on 6th May, 2015. In view thereof, decree passed in R.C.A No. 151 of 2013 stands modified to the extent of shares of the parties to the consent terms.

9. Civil Application is allowed in terms of prayer clauses

(a) and (b) and is disposed of accordingly with no order as to costs. Order accordingly.

[R.G. KETKAR, J.]