

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.546 OF 2016
WITH
CIVIL APPLICATION NO.1102 OF 2016**

SECOND APPEAL NO.546 OF 2016

Mr. Ramesh Ramchandra Nalawade ...Appellant

vs.

Mr. Sachin Ramchandra Taware And Ors. ...Respondents

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Mr. P.K. Dhakephalkar, Senior Advocate, i/b. A.P. Kulkarni, for the Appellant.

Mr. S.C. Wakankar, for Respondent Nos. 2 and 3.

Mr. D.S. Patil, for Respondent Nos. 6A-2 and 6A-3.

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CORAM : S.C. GUPTE, J.

DATED : 30 JANUARY 2017

P.C. :

. This Second Appeal challenges a judgment and order passed by the District Court at Baramati in Pune in Regular Civil Appeal No.102 of 2012. The impugned judgment and order was passed commonly in two Civil Appeals, namely, Regular Civil Appeal No.101 of 2012 and Regular Civil Appeal No.102 of 2012. By the impugned judgment and order, the former appeal was dismissed, whilst the latter was allowed.

2. The subject matter of controversy in the suit, out of which the present appeal arises, concerns land bearing Gat No.570

admeasuring an area of 6 H 52 R. This suit property originally belonged to Raje Ratansinh Jadhavrao, who granted a Sanad in respect of this property to Bhau Agnu Shinde (Bhau) and Rau Gondhali Malve (Rau). Bhau sold the entire land by a sale deed dated 21 November 1996 to one Taware. After about a year of sale, Bhau filed a suit, being Special Civil Suit No.168 of 1997, against Taware for cancellation of the sale deed, alleging fraud on the part of the purchaser Taware. Anusuya, widow of Rau, applied suo motu for impleadment in this suit, claiming $\frac{1}{2}$ share in the suit property. Her application was allowed and she was added as a plaintiff to the suit. Upon her death, pending the suit, her daughter Baidabai was impleaded as a legal heir of Anusuya. The suit, namely, Special Civil Suit No.168 of 1997, was partly decreed declaring Rau to be the lawful owner of $\frac{1}{2}$ share of the suit property, which came to be succeeded to by Baidabai (through Anusuya). As for the $\frac{1}{2}$ share of Bhau, his suit for cancellation of the sale deed executed by him in favour of Taware was dismissed. It was declared that the sale deed was not binding on the heirs of Rau, namely, Anusuya and through her, Baidabai. Declaration of $\frac{1}{2}$ share of Rau, and through him of Baidabai, was challenged by Taware in a first appeal (First Appeal No.2112 of 2005 in this Court). During the pendency of this appeal, Baidabai executed various documents in respect of her $\frac{1}{2}$ share in the suit property in favour of the Appellant herein, agreeing to transfer her share in favour of the latter. The order in Special Civil Suit No.168 of 1997 was also challenged by Bhau. Bhau's first appeal, namely, First Appeal No.1683 of 2012, together with Taware's appeal, being First Appeal No.2112 of 2005, were transferred to the District Court at Baramati and renumbered as Regular Civil Appeal No.101 of 2012 and 102 of 2012. In these

appeals, legal heirs of Baidabai (vendor of the present Appellant) entered into a compromise with Taware. The present Appellant thereupon filed an intervention in the pending civil appeals. The intervention was rejected by the District Court and the order of rejection was confirmed by this Court. Whilst confirming the order, this Court observed that the present Appellant had the liberty to file an appropriate application, as he may be advised, for separate relief like a suit for specific performance, asserting his own rights. In pursuance of this liberty, the present Appellant filed Special Civil Suit No.72 of 2012 against the heirs of Baidabai as well as Taware for specific performance of his agreement with Baidabai and her legal heirs. In his suit, the present Appellant currently holds an interim injunction restraining the heirs of Baidabai as well as Taware and other Defendants from creating any third party interest in respect of $\frac{1}{2}$ portion of the suit property claimed by the present Appellant through Baidabai and her heirs. In the meantime, during the pendency of Special Civil Suit No.72 of 2012, the District Court at Baramati disposed of the two Regular Civil Appeals, namely, Regular Civil Appeal No.101 of 2012 and 102 of 2012. The effect of the impugned judgment and order of the District Court is that Taware's appeal, insofar as declaration of $\frac{1}{2}$ ownership of Baidabai and her heirs is concerned, stands allowed, setting aside thereby the declaration of $\frac{1}{2}$ ownership of Baidabai and her heirs. This order was passed on a purported compromise between the heirs of Baidabai and Taware.

3. This Court has already held in its order passed on the intervention application of the present Appellant in First Appeal No.102 of 2012 that he had no locus insofar as the cause of action between the

legal heirs of Baidabai and Taware is concerned but that he could always adopt his own separate remedy against the heirs of Baidabai seeking specific performance of the agreement for sale executed in his favour by Baidabai and her heirs. The present Appellant has a separate cause of action against the legal heirs of deceased Baidabai as well as Taware concerning $\frac{1}{2}$ portion of the suit property, which was agreed to be sold to him by Baidabai and her legal heirs. Whatever is decided in the legal proceeding as between the legal heirs of deceased Baidabai and Taware, in the premises, can hardly have any bearing on the pending controversy between the present Appellant on the one hand and the legal heirs of Baidabai and Taware on the other hand in his own suit, namely, Special Civil Suit No.72 of 2012. This position is not controverted by Tawares, who are Respondent Nos. 2 and 3 in the present application. Learned Counsel for the Applicant is also agreeable not to press his application for permission to file the present Second Appeal, in case a suitable clarification to the above effect is issued by this Court.

4. The application and the Second Appeal are, accordingly, dismissed as withdrawn with a clarification that the impugned judgment and order passed by the learned District Judge in Regular Civil Appeal No.102 of 2012 shall not, in any way, bind the Applicant herein insofar as his cause of action in Special Civil Suit No.72 of 2012 is concerned. All rights and contentions of the parties, namely, the Applicant herein and Tawares, insofar as the merits of Special Civil Suit No.72 of 2012 are concerned, are kept open.

(S.C. GUPTE, J.)