

Sequeira

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

SECOND APPEAL NO.695 OF 1997

Shri Mahavir Dada Shambhushete. .. Appellant
Vs
Sou.Adubai Nemu Kurade & ors. .. Respondents

Mr.A.M.Kulkarni, for the Appellant.

Mr.S.A.Mudbidri, for Respondent Nos.1 to 3 and heirs of
Respondent No.3.

Mr.Sandeep Koregave, for Respondent No.4-A.

***Coram : N.M.Jamdar, J.
Date : 4 May 2017.***

Oral Order :

By order dated 7 May 2012 in Civil Application No.234 of 2010, the heirs of Respondent No.4 have been directed to be brought on record. Till date amendment is not carried out, same be carried out in three working days. Learned counsel appears on behalf of the heirs of Respondent No.4 as Respondent No.4A.

2. It is informed that Respondent No.3 has expired. Parties have executed Consent terms. Consent terms are filed on record. In the

Consent terms it is stated that all the parties agree that the legal representatives / heirs of Respondent No.3 be brought on record who have been mentioned as 3A, 3B and 3C. The amendment to that effect in the Second Appeal be carried out forthwith within three working days. Learned counsel appears on behalf of Respondent Nos.3A to 3C.

3. The learned counsel for the parties state that the parties have executed Consent terms. The Consent terms are filed through Power of Attorneys. Subject to the verification of the Power of Attornies of both the Appellant and Respondents by the registry, the Consent terms are taken on record and marked 'X'. In case there is any objection, regarding the power of attorney, the registry will bring it to the notice of this Court by placing the matter 'for directions'.

4. For ready reference, the Consent terms are reproduced as under-

1. The Appellant is the Original Defendant No. 1. Respondent Nos. 1 to 3 are Original Plaintiffs and Respondent No. 4 is the Original Defendant No. 2 in a suit bearing RCS No. 23 of 1990 for partition and separate possession.

2. The present dispute pertains to two agricultural lands bearing Gat Nos. 1927 admeasuring 31R and Gat No. 1646 admeasuring 31R both situated at Mouje Nandani, Tal: Shirol Dist: Kolhapur. The present dispute also pertains to one house property bearing C.S. No. 510 i.e. current Grampanchayat property No. 1435 admeasuring

78.5 sq. mtrs. within the grampanchayat limits of Mouje Nandani, Tal: Shirol Dist: Kolhapur.

3. *The Trial Court partly decreed the suit on 30.09.1992 declaring that the Plaintiffs have in all 3/4th share only in the agricultural lands and dismissing the suit in respect of the house property.*

4. *Against the said decree the Appellant preferred R.C.A. No. 432 of 1992 and the Original Plaintiffs filed cross objections against the dismissal of suit in respect of the house property.*

5. *The Appellate Court partly allowed the appeal as well as cross objection declaring that all the 3 Plaintiffs and both the Original Defendants are entitled for 1/5th share each in all the properties i.e. agricultural lands and the house property also.*

6. *Against the said decree only the present Appellant i.e. Defendant No. 1 filed the instant Second Appeal which is already admitted by this Hon'ble Court and the same is pending for final hearing.*

7. *Pending the appeal the Respondent No. 4 i.e. Original Defendant No. 2 expired. By virtue of will executed by her, the son of the present Appellant namely Shri. Shambhu Mahavir Shambhushette is brought on record as her sole legal representatives vide order dated 07.05.2012 in Civil Application No. 234 of 2010.*

8. *Similarly, pending the appeal Respondent No. 3 i.e. Original Plaintiff No. 3 – Ratnabai is expired on 25.12.2008. All the parties to the present consent terms unanimously agree to bring on record her legal representatives and the Appellant undertakes to amend the record and proceedings of the present Second Appeal*

forthwith. The said legal representatives are also signatories to the consent terms.

9. Looking to the long drawn litigation amongst the parties, all the parties have unanimously decided to settle all their inter-se disputes completely and finally in respect of the above mentioned agricultural lands and house property. Since all the parties have decided to settle the dispute amicably, they humbly request this Hon'ble Court to dispose of the present Second Appeal without recording any finding on the rival contentions of the respective parties and in terms of the present consent terms.

Thus, all the parties hereby agree and undertake that the agricultural land Gat No. 1646 admeasuring 31R and the house property C.S. No. 510 admeasuring 78.5 sq. mtrs. as described in the original plaint shall be permanently allotted, owned and possessed by the Appellant i.e. Orig. Defendant No. 1 exclusively and without any interruption, dispute, claim, demand, obstruction or interference by the Respondents/Plaintiff Nos. 1, 2 and 3A, 3B & 3C. Similarly, all the parties hereby agree and undertake that the agricultural land bearing Gat No. 1927 admeasuring 31R as described in the original plaint shall be permanently allotted, owned and possessed by the Respondents/Original Plaintiff Nos. 1, 2, 3A, 3B and 3C together exclusively and without any interruption, dispute, claim, demand, obstruction or interference by the Appellant/Orig. Defendant No. 1 and Respondent No. 4A.

10. The Appellant/Original Defendant No. 1 shall not claim any right, title, interest in respect of the agricultural land Gat No. 1927 admeasuring 31R. Similarly the Respondent No. 1, 2, 3A, 3B & 3C shall not claim any right, title, interest in respect of agricultural land Gat No. 1646 admeasuring 31R and the house property bearing C.S. No. 510 admeasuring 78.5 sq. mtrs.

11. *The Respondent No. 4A shall not claim any right, title, interest in respect of any of the properties mentioned hereinabove nor obstruct or interfere with the allotment, ownership and possession of the respective properties of the respective parties.*

All the parties agree and undertake to act upon and give effect of these consent terms in the revenue records of the respective properties within a period of 8 weeks from today and all the parties shall cooperate each other in this regard.

12. *The Original Plaintiff Nos. 1 and 2 & the legal representatives of the Plaintiff No. 3 have appointed Mr. Babaso Nemu Kurade as their power of attorney holder for the purpose of signing the present consent terms. Similarly, the Appellant/Original Defendant No. 1 has appointed Mr. Babaso Devgonda Patil as his power of attorney holder for the purpose of signing the present consent terms. The Respondent No. 4A i.e. Original Defendant No. 2 has personally signed the present consent terms.*

13. *All the parties agree that they have entered into these consent terms out of their free will and consent, without any force, fraud, fear, coercion undue influence or misrepresentation and after obtaining the independent legal advice. As such they agree and undertake to abide by and comply with these consent terms in its true letter and spirit. These consent terms shall be binding on heirs and legal representatives of all the parties.*

In case for any reason whatsoever these consent terms could not be acted upon or complied with within a period of 8 weeks from today, these consent terms shall stand cancelled and withdrawn and thereafter the present second appeal shall stand revived to its current position.

All the parties humbly request this Hon'ble Court to accept the assurances and undertakings by the respective parties and modify the decrees of both the Courts below in terms of these consent terms.'

5. The learned counsel for the parties state that the parties have resolved their dispute as above and they have agreed that two properties will be given to the Appellant and one will be retained by the Respondent No.1.

6. Having gone through the Consent terms, at the request of the learned counsel for the parties, the Second Appeal is disposed of in terms of Consent terms. The parties and registry to take suitable steps to draw a decree in terms of Consent terms.

7. Needless to state that the Consent terms will not permit the parties to override any provisions of law, neither the Consent terms will be binding on those who are not signatories to the Consent terms. It is informed that both the Power of Attorney holders and Respondent No.4A are present in the Court.

(N.M.Jamdar, J.)