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

**SECOND APPEAL (ST) NO.2221 OF 2018
WITH
CIVIL APPLICATION NO.205 OF 2018
IN
SECOND APPEAL (ST) NO.2221 OF 2018**

Baburao Jinnappa Sarade and ors ... Appellants.
V/s.
Raosaheb Jinnappa Sarade and ors ... Respondents

Mr. Drupad S. Patil, for appellants.
Mr. Tejpal S. Ingale, for respondent Nos. 1 to 6.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 18th JULY, 2018.

P.C. :

1] Learned counsel for both the parties submit that the matter has been amicably settled between the parties. Accordingly the Consent Terms, tendered by them are taken on record and marked "X" for identification. Appellant No.1 is present in person; whereas respondent No.1, along with Power of Attorney and other respondents are also present. They admit the contents in the Consent Terms.

2] In view of the Consent Terms, it is agreed that the judgment and decree dated 24.4.2015 passed in R.C.S. No.141 of 2011,

by Civil Judge Junior Division, Tasgaon and confirmed by District Judge-3, Sangli, in Regular Civil Appeal No.187 of 2015, is modified as follows :-

“II. The parties original Plaintiffs and original defendant Nos 1, 3 and 4 are declared as owners of suit property bearing Gat No.330 admeasuring O-H 51R situated at Kavathe Ekand, Tal. Tasgaon, Dist. Sangli. The Plaintiffs are entitled for possession of the suit property from defendant No.1 to the extent of their 4/7th share admeasuring O-H 29R only. The remaining land admeasuring O-H 22R the orig. Defendant Nos. 1, 3 and 4 are entitled for possession. The Orig. defendant No.1, who is in possession of entire suit land will hand over vacant and peaceful possession of portion of land which plaintiffs are entitled for on or before 01.08.2018.

III. The Respondent Nos 1 to 6 the original plaintiffs and the appellant Nos. 1, 3 and 4 the original defendants are entitled for 1/7th share each as owners in the suit property bearing Gat No.330 admeasuring O Hecter 51 Are, situated in village Kavathe Ekand, Tal-Tasgaon, Dist. Sangli. The appellants original defendants (except defendant No.2), together are entitled for possession of their 3/7th share admeasuring O-H 22 R towards South side of said suit land Gat No.330 and remaining Northern side portion of land admeasuring O-H 29R, the respondents

original plaintiffs together are entitled for possession of the same as shown in rough sketch map of the said land annexed to these Consent Terms. The appellant NO.1 original defendant No.1 will hand over possession on or before 01.08.2018 of aforesaid portion of land admeasuring O-H 29 R to the respondent No.1 original plaintiff No.1 Rosaheb Jinnappa Sarade for himself and for the remaining respondent Nos 2 to 6 the original plaintiffs 2 to 6 who is having their power of attorney dated 26.0.3.2018 for the same. The parties are entitled for possession and cultivation of their share hence forth as owners of the respective shares.

IV. The respondent Nos 1 to 6 the original plaintiffs will be entitled for mesne profits to the extent of their 4/7th share in respect of suit land determined by the Civil Court in proceeding for the same filed against appellant No.1 original defendant No.1.

V. The Reconveyance deed dated 09.09.2016 executed through Court pursuant to execution of the impugned judgment and decree passed will stand cancelled and the respondent Nos. 1 to 6 original plaintiffs shall be entitled for refund of stamp duty and registration charges paid under the said deed.

VI. The respondents original plaintiffs are entitled for withdrawal of sum of Rs.6,429/- out of the mortgage amount of Rs.15,000/- deposited by them in the trial

Court pursuant to the decree passed in Regular Civil Suit No.141 of 2011 keeping the balance of Rs.8,571/- out of the same to the extent of their share only, which the Appellant No.1 original defendant No.1 entitled to withdraw.

VII. The appellant No.1 original defendant No.1 failed to abide the terms as stated above then the impugned judgment and decree dated 24.04.2015 passed in Regular Civil Suit No.141 of 2011 by Trial Court Ld. CJJD, Tasgaon and confirmed by impugned judgment and decree dated 18.11.2017, in Regular Civil Appeal No.187 of 2015, by Ld. District Judge-3 Sangli, stands confirmed and the original plaintiffs are entitled to execute the decree accordingly. The appellant No.1 original defendant No.1 will not object for taking water by respondent original plaintiff for portion of their suit land from Sidhraj Pani Purvatha Sanstha”.

3] The Second Appeal and the Civil Application, both are disposed off in terms of Consent Terms. The Consent Terms shall form part and parcel of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]