

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

**SECOND APPEAL NO. 104 OF 2017
WITH
CIVIL APPLICATION NO. 240 OF 2017**

Ramachandra Shankar More	...	Appellant
V/s.		
Bapu Raosaheb Deshmukh		
(Since deceased) Through LR.s. & Ors.	...	Respondents

- Mr.Dilip Bodake for the Appellant.
- Mr.Anand S. Kulkarni for Respondent Nos.1A, 4 and 5.
- Mr.A.R. Patil, A.G.P. for Respondent Nos.6 to 8.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 5th JULY, 2018.

P.C. :

1] Heard learned counsel for the parties.

2] This Second Appeal is directed against the judgment and decree dated 29/09/2016 passed by the Adhoc District Judge-3, Solapur, thereby dismissing Regular Civil Appeal No.87 of 2014, which was preferred against the judgment and decree dated 07/12/2013 passed by the 2nd Jt. Civil Judge, Junior Division, Solapur, in Regular Civil Suit No.67 of 1999.

3] The said suit was filed by the present Appellant for declaration that the decree passed in Regular Civil Suit No.82 of 1975 is illegal, void and not binding on him and Respondents be restrained from taking possession of the suit property on the basis of the said decree in Regular Darkhast No.79 of 1987.

4] The only and main contention raised by learned counsel for the Appellant in this Second Appeal is that in the said suit bearing Regular Civil Suit No.82 of 1975, Defendant No.1 therein had filed a compromise pursis and he has given consent for the decree of the suit with respect to his 1/4 share. Accordingly, the order was also passed. However, that order was not considered by the trial Court when it passed the decree in Regular Civil Suit No.82 of 1975.

5] However, it is pertinent to note that the same contention was raised by the Appellant in Civil Appeal No.44 of 1987 which was preferred against the said judgment and decree and it was held that as regards the 1/4 share, which was given up by Defendant No.1 of that suit, it will be considered in the execution proceedings. Despite that, the Appellants have filed this fresh suit again on the same contention. Both the trial Court and the Appellate Court were again constrained to observe that in respect of this 1/4 share, the executing Court will

definitely consider the same. It is also pertinent to note that the Appellant had already filed Regular Civil Suit No.107 of 1998 also in respect of the same contention and it came to be dismissed on 30/07/2006.

6] Thus, it is a third round of litigation, that too without there being any merits in the case and hence, there is no question of admission of this Second Appeal.

7] The Second Appeal therefore stands dismissed at the stage of admission itself.

8] In view of disposal of the Second Appeal, nothing survives in the Civil Application and hence, it also stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]