

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6865 OF 2018

Shubham Murlidhar Agarwal .. Petitioner
Versus
Atmaram Waman Bhoir & Ors. .. Respondents

Mr. Vineet B. Naik, Senior Advocate with Mr. Sandesh D. Patil with
Mr. Chintan Y. Shah I/b. Prithviraj S. Gole for petitioner
Mr. Pavan S. Patil, for respondent Nos. 1 to 6
Mr. Pravin Kumar Samdani, Senior Advocate I/b. A.R.Gole for
respondent No.7

WITH
WRIT PETITION NO.6866 OF 2018

Shubham Murlidhar Agarwal .. Petitioner
Versus
Atmaram Waman Bhoir & Ors. .. Respondents

Mr. Prasad Dani, Senior Advocate with Mr. Sandesh D. Patil with
Mr. Chintan Y. Shah I/b. Prithviraj S. Gole for petitioner
Mr. Pavan S. Patil, for respondent Nos. 1 to 6
Mr. Pravin Kumar Samdani, Senior Advocate I/b. A.R.Gole for
respondent No.7

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 20th July 2018.

P.C.

These two petitions are decided by a common order as
the issue involved in both these petitions, including the parties, are

same. Similarly, the order under challenge is also identical.

2] The parties, for sake of convenience, will be referred by their names, because there are three suits filed and the status of each party in respective suit vary.

3] In short the narration of litigation is as follows:-

(a) Bhoirs have 50% share in a piece of land and are thus owners of the said 50% share. The said 50% land is the property involved in the three suits. Bhoirs are the plaintiffs in Suit No.20 of 2010 filed before the learned Joint Civil Judge, Senior Division, Thane.

(b) On 1st November 2002, the original owners entered into an agreement to sale their undivided share to one Shri Shyamsunder Agarwal, who is one of the defendants in all the three suits;

(c) On 26th January 2004, the said Shyamsunder Agarwal was put in possession of the suit property after execution of

supplementary agreement;

(d) On 26th May 2006, Bhoirs executed an irrevocable Power of Attorney in favour of Shyamsunder Agarwal;

(e) On 13th December 2006, Mr. Shyamsunder Agarwal executed an agreement to sale in favour of M/s. Ramdev Construction Company Pvt. Ltd. (hereinafter referred to as M/s. Ramdev Construction) and a Power of Attorney was also executed. Subsequently, there was some transaction between Shyamsunder Agarwal and the said Ramdev Construction.

(f) However, the transactions between the parties so also the nature of transaction between Shyamsunder Agarwal and Ramdev Construction are disputed in respective suits raising their respective defences.

4] However, considering the reliefs claimed by respective parties in their respective suits, the dispute between the parties, inter se, can be summarised as follows:-

(a) On 13th December 2006, Shyamsunder Agarwal executed an agreement and power of attorney in favour of Ramdev Construction. It appears from the record that Ramdev Construction on 18th August 2008 conveyed the suit property to itself on the basis of that power of attorney. Thereafter, on 26th September 2008, Shyamsunder Agarwal executed a registered deed of conveyance, in favour of Shubham Agarwal. Thereafter, as the properties were conveyed by sale deeds in favour of two parties, different three suits came to be filed i.e.

(i) Suit No.738 of 2008 filed on 7th October 2008 against 11 defendants including Ramdev Construction, Shyamsunder Agarwal and Bhoirs amongst other defendants;

(ii) Suit No.748 of 2008 filed on 13th October 2008 by Shubham Agarwal against six defendants and Ramdev Construction was impleaded later on as defendant No.7;

(iii) Suit No.20 of 2010 was filed by Bhoirs who are owners of 50% share in the original plot of land against ten defendants including Shubham Agarwal, Shyamsunder Agarwal and Ramdev

Construction amongst other defendnts;

(iv) Shyamsunder Agarwal, Bhoirs and Shubham Agarwal, subsequently decided to settle all disputes amongst themselves. Therefore, the plaintiffs in Suit No.748 of 2008 i.e. Shubham Agarwal filed an application below Exh.119 seeking permission to delete the defendant No.7 i.e. Ramdev Construction and also filed an application below Exh.120 for taking on record compromise purshis. The compromise was between the plaintiff Shubham Agarwal on one hand and the six defendants on the other, including Ramdev Construction;

v] In Suit No.20 of 2010 filed by Bhoirs they also moved an application below Exh.80 for deletion of defendant Nos. 3 to 10, which include Ramdev Construction and filed compromise purshis below Exh.81.

vi] By these two compromise purshis the plaintiffs in Suit No.748 of 2008 Shubham Agarwal and plaintiff in Suit No.20 of 2010 i.e. Bhoirs decided to settle their dispute between themselves and Shyamsunder Agarwal.

Vii] These terms of compromise were opposed by Ramdev Construction, a defendant in both the suits, on the ground that Ramdev Construction has filed separate suit i.e. Suit No.738 of 2008 wherein all these parties are defendants and relief of partition and challenging the validity of the conveyance deed dated 26th September 2008 was sought.

Viii] Learned Trial Judge after considering both the suits, rejected the compromise terms on the ground that rights of other defendant i.e. Ramdev Construction are going to be affected.

5] Being aggrieved by the said decision of Learned Trial Judge rejecting the terms of compromise filed by the respective plaintiffs and defendants in those two suits on the ground that rights of other defendant i.e. Ramdev Construction are going to be affected, the plaintiffs in these two suits have filed these petitions.

6] Heard the submissions of the respective senior Counsel for parties. The application below Exh.119 and Exh.80 are for deletion of the defendants and plaintiff being dominus litus,

applications ought to have been allowed. I allow the applications below Exh.119 in Suit No.748 of 2008 and Exh.80 in Suit No.20 of 2010 and accordingly in both suits, one of the defendants i.e. Ramdev Construction is hereby deleted.

7] As the defendant i.e. Ramdev Construction is now deleted from the array of parties and no longer remains party to the suit the terms of compromise purshis not binding on Ramdev Construction. It is made clear that the decree in these two suits pursuant to the compromise will not be binding on Ramdev Construction in any manner and much less in Suit No.738 of 2008.

8] In view of this, the orders dated 8th June 2018 passed by 2nd Joint Civil Judge, Senior Division, Thane below Exh.1 in Suit No.748 of 2008 and Suit No.20 of 2010 are set aside and the terms of compromise which are submitted as per Exh.120 in Suit No.748 of 2008 and as per Exh.81 in Suit No.20 of 2010 are hereby accepted and accordingly following order is passed:-

(a) The orders dated 8th June 2018 passed by 2nd Joint Civil Judge, Senior Division, Thane below Exh.1 is set

aside;

(b) The terms of compromise which are submitted as per Exh.120 in Suit No.748 of 2008 and as per Exh.81 in Suit No.20 of 2010 are hereby accepted;

(c) Both the Suits i.e. suit No.748 of 2008 and Suit No.20 of 2010 are allowed in terms of compromise. Decree be drawn accordingly.

(d) The decree passed in both these suits will not be binding on Ramdev Construction;

(e) The petitions are disposed of in the above terms. No orders as to costs.

Yogeshwar
Bhalchandra
Gokhale

Digitally signed by
Yogeshwar
Bhalchandra Gokhale
Date: 2018.07.25
19:59:15 -0400

(MRS.MRIDULA BHATKAR, J.)