

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 544 OF 2015

Kisansing Khushalsing Rajput
since deceased through his LRs.

Rukmini K. Rajput & Ors.

.. Appellants

vs.

Dagadusing Gajarsing Rajput & Ors.

.. Respondents

Mr. Rahul S. Kulkarni for Appellants.

Mr. P. D. Dalvi for Respondents.

CORAM : M. S. SONAK, J.

DATE: 23 FEBRUARY 2018

P.C :

1] Mr. Dalvi, the learned counsel for the respondents points out that by the judgment and decree which is impugned in this second appeal, the validity of sale deed dated 5th April 1995 has been upheld. He points out that on the basis of the sale deed dated 5th April 1995, one of the respondents had instituted a suit for partition being Regular Civil Suit No. 548 of 2015 before the Civil Judge, Senior Division at Kolhapur against the appellants. He points out that this Regular Civil Suit No. 548 of 2015 has been settled in pursuance of a compromise dated 30th June 2016. He placed on record the consent decree which supports this position. Mr. Dalvi submits that accordingly nothing survives in this appeal.

2] Mr. Kulkarni, learned counsel for the appellants submits that he does not have any instructions as regards the settlement between the parties. He submits that at least technically, there is no settlement in so far as this second appeal is concerned. He submits that in the absence of any specific instructions from the appellants, he cannot withdraw this appeal.

3] This matter was adjourned to today in order to enable the learned counsel for the appellants to obtain instructions in the light of the statement made by Mr. Dalvi, learned counsel for the respondents that the matter has indeed been settled. It appears however, that instructions are not forthcoming because the learned counsel for the appellants has not been able to contact the appellants despite attempts on the part of the learned counsel to do so.

4] The consent decree dated 30th June 2016 is taken on record. From the same, it is apparent that the appellants and the respondents have partitioned the properties amongst themselves, *inter alia*, on the basis that the sale deed dated 5th April 1995 is valid. If this is the position, then, the appellants can obviously not pursue this appeal and seek to upset the impugned judgment and decree which has in fact held that the sale deed dated 5th April 1995 is legal and valid. On this short ground, the appeal is dismissed. There shall however be no order as to costs.

5] The civil application does not survive and the same is also dismissed.

(M. S. SONAK, J.)