

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

FIRST APPEAL NO. 1124 OF 2013

Kuldeep U. Ostwal & Another	..	Appellants.
v/s.		
Shri Chandrakant N. Patel & Others	..	Respondents.

Mr. Dinesh Tiwari with Mr. Swapnil Ambure and Mikhail Dey i/b. Dinesh Tiwari & Associates, for the Appellants.

Mr. Prasad Dani, Sr. Advocate with Mr. J. K. Shah, for Respondent Nos.1 to 7.

Ms. Divya Sanghavi i/b. Mr. Dharmesh Jain, for Respondent No.8.

Mr. Prithviraj S. Gole i/b. Sandesh D. Patil, for Respondent No.9.

Mr. Nilesh S. Patil, for Respondent Nos.12 to 12.3

**CORAM: M.S.SANKLECHA &
ANUJA PRABHUDESSAI, JJ.**
DATE : 4th MAY, 2018.

P.C:-

Not on board. Mentioned. Upon mentioning, taken up on production board.

At the outset, Mr. Tiwari, learned Counsel for the Appellants contends that the Respondent Nos.10 and 11 were joined as a proforma parties. He submits that the parties have arrived at settlement and that the presence of respondent nos.10 and 11 is not necessary to dispose of the appeal as per the consent terms. He therefore seeks leave to delete the names of the respondent nos.10 and 11 from this appeal. The other respondents have no objection to the deletion of the name of the

respondent nos.10 and 11. Hence, the oral prayer is allowed. The names of the respondent nos.10 and 11 be deleted. Cause title be amended forthwith.

2 The Appellants herein had preferred an appeal against the impugned judgment and decree dated 25th March, 2013 whereby the learned Civil Judge, Senior Division, Thane, had dismissed the Special Civil Suit No.436 of 2012.

3 The subject matter of the suit was the property admeasuring 25930 sq meter under Survey No. 219 Sub Division 3, 4 and 7, Survey No.205 Sub Division 2, Survey No.206 Sub Division 1 and 3, Survey No.218 Sub Division 3 and Survey No.204 Sub Division 1 of Village Bhayander, Taluka and District Thane. The appellants who were the plaintiffs in the suit had claimed to be the absolute owners of the suit property. The dispute between the appellants-plaintiff and the respondents-defendants in respect of the suit property resulted in the plaintiff filing a suit for declaration and injunction. After appreciating the evidence on record and hearing the submission advanced by the learned Counsel for the respective parties, the learned Civil Judge, Senior Division, had dismissed the suit by judgment dated 25th March, 2013. Being aggrieved by the said judgment and decree the appellants-plaintiffs have preferred the present appeal.

4 This Appeal was on board yesterday i.e. 3rd May, 2018. When the matter was called out, parties sought to tender consent terms dated 3rd May, 2018. However, one of the parties to the consent terms was not present in Court, nor had she executed the consent terms. In view of the above view, no order was passed in this Appeal, yesterday.

5 Mr. Dinesh Tiwari, the learned Counsel for the Appellants, Mr. Dani, learned Senior Counsel for the Respondent Nos.1 to 7, Ms. Divya Sanghavi, learned Counsel for the Respondent No.8, Mr. P. S. Gole, for Respondent No.9 and Mr. Nilesh Patil, for Respondent Nos. 12 to 12.3 have submitted that the parties have settled the matter amicably and have entered into the consent terms. They have tendered the consent terms which are signed by both the appellants and the respondent no.4.2 on his behalf and as Attorney of respondent nos.1.1, 2.1., 3.2, 3.3, 4.3, 7.1, 7.2, 7.3 and 7.4. The terms are also signed by the authorized signatory of the respondent no.8, by the respondent nos.9, 12, 12.1, 12.2 and 12.3. The terms are also signed by the learned Counsel for the appellant and the learned Counsel representing the respective respondents. The copies of the Power of Attorney executed by the respondent nos.1.1, 2.1, 3.2, 3.3, 4.3, 7.1., 7.2, 7.3, and 7.4 whereby they have appointed Mr. Uday Patel as the Power of Attorney authorizing him to enter into the compromise/ consent terms on their behalf are annexed to the consent terms. Similarly, the pan cards/aadhar cards of the concerned parties and the Board of Resolution authorizing Manoj Purohit to file terms on behalf of the respondent no.8 have been annexed to the consent terms.

6 The Appellants as well as the respondent nos.4.2 and Shri Manoj Purohit, authorized signatory of the respondent no.8, and the respondent no.9, respondent no.12, respondent no.12.1, respondent no.12.2 and the respondent no. 12.3 are present before the Court and they have been identified by their respective counsel. The appellants and these respondents have stated that the consent terms were signed by them in the full understanding of its contents and confirm the same.

Notwithstanding the above, on being specifically asked the newly added Respondent Nos.12, 12.1, 12.2 and 12.3, who have executed the document in Marathi and by thumb impression (Respondent No.12.1) stated that the consent terms were explained to them in Marathi and that they have understood the contents of the said consent terms and that they admit and confirm the said consent terms.

7 We are satisfied that the Appellants and the Respondents have entered into these consent terms willingly and out of their own volition. The consent terms are agreeable to the parties and they same are accepted and are taken on record and marked “X” for identification. The statements made in the consent terms are accepted as undertaking given to the Court.

8 The parties have settled the dispute as per the consent terms. Hence, decree be drawn as per the consent terms which shall form part of the decree. Registry to send the decree to the Sub-Registrar, within whose jurisdiction the immovable property is situated for registration under the Registration Act, 1908. Ordered accordingly.

9 This **Appeal** is **disposed of** .

(ANUJA PRABHUDESSAI,J.)

(M.S.SANKLECHA,J.)