

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (ST) NO. 30112 OF 2016

Mr.Manjily Devassy Verghese
(deceased) Through Lrs
1/1 Mrs. Mary Verghese
and another

...Appellants

Versus

Mr. Krushna Laxman Khandagal
(deceased) Through L.R.
1/1 Mandakini Krushna Khandagale
and others.

...Respondent(s)

WITH
CIVIL APPLICATION NO.663 OF 2017
IN
SECOND APPEAL (ST) NO. 30112 OF 2016
WITH
CIVIL APPLICATION NO.664 OF 2017
IN
SECOND APPEAL (ST) NO. 30112 OF 2016
WITH
CIVIL APPLICATION NO.317 OF 2018
IN
SECOND APPEAL (ST) NO. 30112 OF 2016

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Mr. K.S. Dewal i/b. J.M. Joshi i/b. R.S. Tanna, Advocate for Appellants.
Mr. Harshad Inamdar, Advocate for Respondents No.1/1, 2/1, 2/2, 2/3,
2/4, 3, 4 and 5.

Mr. Yogesh B. Dandekar, Advocate for Respondents No.16/1, 16/2,
20/1, 20/2, 22 and 22.

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CORAM : R. G. KETKAR, J.

DATE : 02nd NOVEMBER, 2018

P.C.

1. Not on board. At the joint request of learned Counsel appearing for the parties, taken up in the production board.
2. Heard Mr. K.S. Dewal, learned counsel for the applicants, Mr. Harshad Inamdar, learned Counsel for Respondents No.1/1, 2/1, 2/2, 2/3, 2/4, 3, 4 and 5 and Mr. Yogesh B. Dandekar, learned Counsel for Respondents No.16/1, 16/2, 20/1, 20/2, 22 and 22.
3. Mr. Dewal submitted that Second Appeal is instituted by the heirs and legal representatives of original defendant No.2 Manjily Devassy Verghese challenging the judgment and decree dated 20.8.2015 passed by the learned District Judge-1, Mangaon, District – Raigad in Civil Appeal No.120/2008. He submitted that respondent No.1 Krushna Laxman Khandagale (original plaintiff) had instituted Regular Civil Suit No.42/2002 against original defendant No.2 Manjily Devassy Verghese and others challenging the sale deed executed in her favour. Defendant No.1 as a Constituted Attorney had executed sale deed in favour of defendant No.2. Original plaintiff Krushna Khandagale prayed for declaration that the sale deed executed in favour of defendant No.2 is illegal and void and same is not binding on the plaintiff. The plaintiff also prayed for perpetual injunction restraining defendants from

entering into and/or causing obstruction to the plaintiff's possession. In the alternate, the plaintiff claimed possession from defendant No.2 in the event of the Court coming to the conclusion that defendant No.2 is in possession.

4. By order dated 10.7.2006, the learned trial Judge dismissed the suit. Aggrieved by that decision, only plaintiff preferred Civil Appeal No.120/2008. The supporting defendants did not file appeal or cross objections and thus accepted the trial Court's decision. Mr. Dandekar does not dispute this position. The appeal was allowed by the learned District Judge on 20.8.2015. The learned District Judge declared that the sale deed dated 21.6.2001 executed by defendant No.1 in favour of defendant No.2 is illegal and is not binding on the plaintiff. The learned District Judge also issued injunction restraining defendant No.2 from obstructing the possession of the plaintiff over the suit lands.

5. Mr. Dewal submitted that the legal representatives of defendant No.2 and the legal representatives of the original plaintiff have entered into consent terms on 2.11.2018. He states that the L.Rs. of original plaintiff and the L.Rs. of original defendant No.2 have signed the consent terms. The advocates appearing for the appellants as also respondents No.1/1, 2/1, 2/2, 2/3, 2/4, 3, 4 and 5 as also their Advocate have signed the consent terms. Along with the consent terms the photo-copies of Aadhaar Cards of appellant No.1/1 as also

respondents No.1/1, 2/1, 2/2, 2/3, 2/4, 3, 4 and 5 are enclosed. The consent terms along with these documents are taken on record and marked 'A collectively' for identification.

6. Mr. Dewal submits that the consent terms provide for deletion of respondents No.6 to 23 who are original defendants No.1, 3 to 19 from Regular Civil Suit No.42/2002 and Civil Appeal No.120/2008 as also from the Civil Applications. The consent terms further provide that respondents No.1/1, 2/1 to 2/4, 3 and 5 have no objection for allowing Civil Application No.663/2017 for condonation of delay. He further submits that all the respondents are deleted from the present proceedings, Civil Application No.317/2018 for publication of notice to respondents No.2/2, 10, 11, 13, 15, 17, and 22 may be disposed as does not survive.

7. Civil Application No.664/2017 for stay of the execution of the District Court judgment may also be disposed of in view of disposal of main Second Appeal in terms of the consent terms.

8. Learned Counsel for the parties submit that the consent terms provide for setting aside the judgment and decree dated 20.8.2015 passed by the learned District Judge in Civil Appeal No.120/2008. Respondents No.1/1, 2/1 to 2/4 and 3 to 5 have agreed, accepted and

confirmed that the sale deed dated 21.6.2001 executed in favour of original defendant No.2 is valid.

9. Mr. Dewal submits that appellants No.1/1 and ½ are present in the Court. Mr. Inamdar states that respondents No.1/1, 2/1, 2/3, 2/4 and 3 to 5 are also present in the Court. The parties admit and confirm the correctness of the consent terms. The learned Counsel for the appellants and the respective respondents submit that Second Appeal may be disposed of in terms of the consent terms.

10. After perusing the consent terms, I am satisfied that the controversy between the parties is amicably settled in terms of the consent terms. The decree passed by the learned District Judge on 20.8.2015 in Civil Appeal No. 120/2008 stands substituted by the consent terms. Decree shall be drawn up accordingly. In view of disposal of Second Appeal, Civil Application No.664/2017 as also Civil Application No.317/2018 do not survive and the same are disposed of as infructuous. Civil Application No.663/2017 for condonation of delay stands allowed in terms of paragraph-a with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)