

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**932 CIVIL APPLICATION NO.1855 OF 2019
IN SA/162/2007**

Haribhau Madhavrao Belekar
... Versus ...
Vijay Gurulingappa Lohakare and others

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Mr. S.S. Bora, Advocate for the applicant
Mr. V.S. Bedre, Advocate for the respondent No.1
Mrs. G.N. Chincholkar, Advocate for the respondent Nos.2, 3 and 4A
Mr. V.R. Jain, Advocate for the respondent Nos.16 to 18
Mr. S.S. Bora, Advocate for the respondent Nos. 6(4), 7 to 10 and 12 to 15

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CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 06th MARCH, 2019

PER COURT :

- 1 Liberty is granted to add prayer, that would be “a-1”
- 2 Present application has been filed by those applicants who have been arrayed as respondents in Second Appeal, by way of order passed by this Court in Civil Application No.7555 of 2011. It came to be allowed on 27.02.2015. It is also stated that while issuing notices to the proposed respondents, this Court had passed an order of ad interim relief in terms of

prayer clause 'B' and 'C'. Prayer clause 'C' was in respect of restraining the present applicant from creating third party interest as well as those non applicants therein. It has been contended that one Rangnath was the common ancestor of the original plaintiff and defendants. He expired on 13.08.1957 leaving behind his six sons. They were viz. Guruling, Manmath, Maharudra, Shantiling, Vishwanath and Murlidhar. Widow of Maharudra had filed Special Civil Suit No.186/1980 for partition and separate possession against the brothers of Maharudra. It was compromised and each one of them was put in possession of the separate property. It is submitted by the applicant that Shantiling had sold the property, which had come to his share, to one Siddharth Ghayதாக on 03.07.1987. Mutation entry to that effect was effected. Thereafter, the present applicant had purchased the said property from said Siddharth by way of two registered sale deeds dated 17.10.1990 and 31.10.1991. It is stated that it was prior to the compromise in Special Civil Suit No.186/1980. In compromise decree it was clearly submitted that the partition is in respect of those properties which have been already sold by the parties. In other words, it has been tried to be stated that the property which was sold by Shantiling to Siddharth was excluded from partition. Thereafter son of Guruling by name Vijaykumar had filed Regular Civil Suit No.268/2000 for partition and separate possession

against his mother and sisters. In that proceeding a compromise had taken place. In the compromise it was specifically told that original defendant No.1 i.e. Guruling had received 1/6th share from the ancestral property. Out of said share, plaintiff and defendants are entitled to 1/5th share each. The said suit came to be disposed of in terms of those compromise terms, which were at Exh.69. However, thereafter R.C.A. No.355/2004 was filed by the plaintiff therein i.e. Vijaykumar, challenging the said compromise, however, the said appeal came to be dismissed on the ground that the appeal is not maintainable against compromise decree. Now, the said Judgment and Decree passed in R.C.A. No.355/2004 has been challenged in the Second Appeal bearing No.162 of 2007. The said appeal is admitted by order dated 13.02.2009. In the said appeal original defendant Nos.4 to 6 had filed Civil Application for adding the present applicant as necessary party respondents, as it was told that the respondents have purchased the suit property during the pendency of the original suit. Notice was issued to the proposed respondents and at the same time interim relief was granted in terms of prayer clause 'B' and 'C' as stated above. It is prayed that since the suit property is different and the property purchased by the applicant is different, it is necessary to vacate the order restraining defendants/applicants from creating third party interest. It is also stated

by the applicant that he is now 65 years old. He as well as his wife suffering from old aged ailments. The required money, which he wants to raise after sale of the land, therefore, he has prayed for modification of the order passed by this Court on 08.08.2011 and 27.05.2015 in Civil Application No.7555 of 2011 in Second Appeal No.162 of 2000. In the alternative he has prayed that he be directed to sell out the land which he had purchased from Siddharth Ghaytadak and more particularly described in sale deeds annexed to the application.

3 In principle, it appears that the respondents have no objection, though it was tried to contend that the suit property which had come to the share of Guruling, was the suit property in the suit, yet the applicants are making encroachment on the same and they have the fear that the sale of the land would be together with the encroached portion also.

4 Heard both sides and perused the documents, which have been annexed to the application. In order to cut short it can be said that both the learned Advocates have argued in support of their respective contentions.

5 Copy of the Special Civil Suit No.186/2018, which was filed by the widow of Maharudra, would show that many agricultural lands

and house property as well as movable property was the subject matter. The said suit came to be compromised and the compromise terms were at Exh.291 of the said suit. It was specifically stated that out of the suit property Sy.No.544-A, 544-B and 1033/2 are no longer agricultural lands, certain portion of the premises has been acquired and certain part of the same has been sold by all of the parties. It was decided to have a partition in respect of remaining lands. It appears that those properties were got measured by appointing a retired Cadestral Surveyor and then map was also drawn. Along with the said map, the said compromise pursis was filed and it has been made part of that compromise. Thereupon the decree was drawn in terms of the said compromise. Each one of the brother got a specific share, which was then demarcated as per the map. Shantiling had sold a specific portion on 03.08.1987 to Siddharth Ghaytadak and from Siddharth Ghaytidak the present applicant has purchased the said property by way of two sale deeds. One in 1990 and another in 1991. It is also to be noted that the compromise has been taken place on 12.04.1994 in the said Special Civil Suit. As aforesaid, in the said compromise the partition was in respect of those properties, which were left as not disposed of, either by acquisition or by the partition. That means, there was no order or compromise in respect of the property which was sold by Shantiling to Siddharth and then

Siddharth to the applicant.

6 From the compromise, it also appears that Guruling had received separate property and that was the property, which was the subject matter of R.C.S. No.268/2000. In the said suit also there is a compromise, which was produced at Exh.69 and the said suit came to be disposed of on those compromise terms on 24.09.2004. It can be seen from the contents of the said Civil Suit that the partition was not claimed in respect of all the family properties, as the other legal heirs of Rangnath were not included as a party to the said proceeding. In other words, it can be said that R.C.S. No.268/2000 was restricted to the partition of the properties which came to the branch of Guruling. Under such circumstances, when the present appeal is in respect of challenge to the compromise which had taken place in R.C.S. No.268/2000, in which the property which was sold by Shantiling to Siddharth and Siddharth to applicant is not a suit property. There is no hurdle in allowing the present application to sell out the said land. Hence, the application is allowed in terms of prayer clause a-1 and disposed of.

(Smt. Vibha Kankanwadi, J.)