

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5515 OF 2009

Hamoniddn Hashamuddin Inamdar,
Age: 70 years, occu: household,
R/o Shevgaon, Tal. Shevgaon,
Dist. Ahmednagar

Petitioner

versus

- 1) Amiruddin Hashmuddin Inamdar,
since died through his LR
R/o Shevgaon, Tal. Shevgaon,
Dist. Ahmednagar
- 1A) Usmanoddin Amiruddin Inamdar
since died through is LRs
R/o Shevgaon, Tal. Shevgaon,
- 1B) Afroj s/o Usamanoddin Inamdar
Age: major, occu: agriculture
R/o as above
- 1C) Saroj Usmanoddin Inamdar
Age Major, Occu: Agriculture
R/o As above
- 1D) Tamma Usmanoddin Inamdar
Age Major, Occ. Agriculture,
R/o as above
- 1E) Hawa Usmanoddin Inamdar
Age Major, Occ. Agriculture
R/o as above
- 2) Mushabi Hashomoddin Inamdar
(Died, petitioner himself is legal
heir of Mushabi)
- 3) Mubarakbi Abdul Hamid
Age: 83 years, Occ. Household
c/o Bahauddin S haikh
Police Head Quarter,
Bhingar, Dist. A'nagar.

Respondents.

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Mr. S.R. Sapkal h/f Mr. Sapkal V.D Advocate for Petitioner
Mr. R.R. Mantri, Advocate for Respondents No. R-3 R/ 1a to 1e & 3 :

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CORAM : **RAVINDRA V. GHUGE, J.**

Date: August 8th, 2019

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ORAL JUDGMENT

1 This matter has been listed today, since the cause of action is more than 40 years old.

2 I have heard the learned Advocates for the petitioner and respondent No.3 at length.

3 None appears for the remaining respondents, who are served by the Court notice.

4 There is no dispute that RCS No.12/1958 was decreed by the Judgment dated 14.8.1965. Thereafter, Regular Darkhast No.14/1976 was filed. The learned Advocate for respondent No.3 submits that, in a suit for partition and separate possession, the decree of the trial Court is never a final decree. It is always a preliminary decree. Though the proceedings are registered as Regular Darkhast, in fact, it is a proceeding for converting the preliminary decree into a final decree and to be forwarded to the Collector.

5 For the last 43 years, the execution proceedings are pending. The suit was initiated 61 years ago. The petitioner claims to have tendered a compromise purshis below Exhibit 120. Defendant No.6 is alleged to have given-up her share in the property, by way of a written Say.

6 Application Exhibit 304 was filed by the petitioner on 10.4.2007, praying for dismissal of the Darkhast, as he has received his share. The Trial Court has delivered the impugned order on 21.2.2009, by which the applications Exhibits No.304, 310, 311 and 313 are rejected. Application Exhibit 305 was filed by respondent No.3, herein praying for sending the compromise Exhibit 120 to the Collector under section 54 of the Civil Procedure Code.

7 The grievance of the petitioner is that, all the other litigants in the suit filed for partition and separate possession of the ancestral property, have given-up their share in favour of the petitioner and therefore, the entire suit property of about 8 acres would come to the share of the petitioner and the Darkhast proceeding can be disposed off. There is no purpose of sending the proceeding to the Collector.

8 Learned advocate for respondent No.3 submits that, the parties are not disputing the compromise Exhibit 120, but are not agreeable for the disposal of the suit, since the petitioner is projecting a picture that, he alone has received the entire share of the suit property.

9 It cannot be disputed that, in a suit for partition and separate possession, all the litigating sides are similarly situated and they have a right in the ancestral property, unless there is any specific legal impediment. They are at liberty to

comprehensively settle the dispute, before the executing Court or at the time of converting the preliminary decree into a final decree. However, it cannot be accepted that, the principle of *dominus litus* would apply in such a case, whereby the person, who has initiated such proceeding for seeking allotment of the shares of the property can withdraw the entire proceeding on a plea that, he has received the entire suit property by compromise.

10 In another limb of litigation between the parties, emerging from the same proceeding and especially the compromise decree, the matter reached this Court in second appeal No.712/2014. The petitioner herein is not the legal representative of the appellant Hashamoddin before this Court in the said appeal. The petitioner is the original defendant No.2 in RCS No.40/2003. This court concluded that, it is difficult to accept that, Hashamoddin got the entire suit property of 8 acres by the compromise dated 10.10.1986 Exhibit 120 to the exclusion of other three share holders.

11 By a specific order, the said Court has framed the following substantial questions of law:-

- (i) Whether the learned District Judge has correctly interpreted compromise dated 10.10.1986 at Exhibit 120 ?
- (ii) Whether under the compromise dated 10.10.1986 at Exhibit 120 and in R.D. No.14/1976, defendant No.2 can

claim to have acquired ownership in respect of 8 Acres land
i.e. the suit land ?

- (iii) Whether the Civil has jurisdiction to entertain and try the suit and in particular prayer clause 'A' of the suit in view of decision of this Court in the case of Laxmibai (supra) ?
- (iv) Whether the impugned judgment and decree passed by the learned District Judge is otherwise perverse ?

12 In view of the above, as the second appellate Court has already admitted the proceeding and is to decide the fate of the said compromise purshis Exhibit 120, the contention of the petitioner that, the suit be disposed off, cannot be accepted. So also, the same petitioner had earlier moved an application Exhibit 170, in which the same prayer was made and the said application was rejected by order dated 2.8.1997. The said order has not been challenged and has attained finality.

13 In view of the above, this petition, being devoid of merit, is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J)