

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 634 OF 2018
IN
SECOND APPEAL NO. 1012 OF 2004

Balaso Dargonda Patil .. Applicant
Vs.
Miss. Dipashri Ravso Patil and ors. .. Respondents

Mr.A.M. Kulkarni I/b Mr.Akshay A.Kulkarni, for the Applicant.
Mr. Manoj A.Patil, for the Respondents No.1 & 3.

CORAM : M.S.KARNIK, J.

DATE : 12th JULY, 2019

P.C. :

. By filing this Civil Application, applicant - original defendant No.2 has prayed for recalling of the order dated 09/03/2018 passed by this Court and restoring Second Appeal and hearing the same on its own merits.

2. My attention is invited to the order dated 09/03/2018 passed by this Court. In paragraph 3 of the order, it is recorded that nothing survives in Appeal in view of the subsequent disposal of the properties by the parties. My

attention is also invited to the consent terms of the settlement dated 02/03/2001 before the Executing Court. In view of the clauses mentioned in the consent terms, more particularly clause (9), it was agreed that consent terms can be acted upon subject to the outcome of the Second Appeal.

3. Now it is pointed out by the learned Counsel for the applicant that inadvertently a statement was made that all the properties are disposed of. He would point out that he was not properly instructed as he had just filed appearance on behalf of the applicant. He has now filed affidavit pointing out that applicant is in possession of land admeasuring 1 Hector 49.72 R out of Gat No. 582. It is further pointed out that one Dilip Dattatray Patil who is father of Sanjay Patil had purchased the land out of Gat No. 582 has signed the settlement deed as witness and as such Sanjay Dilip Patil was aware of the dispute between the parties. It is further stated that despite the knowledge that some dispute is pending between the parties, he purchased the lands from respondent No.1 and therefore the

outcome of the present Second Appeal is also binding on him.

4. Learned Counsel for the original respondent No.1 Mr.Manoj Patil opposed the application. He submitted that almost all properties have been disposed of and parties have now changed their position. He submits that the statement was made by the respective Counsel on the basis of which the order came to be passed. He would submit that it would not now be open for the applicant to go back of his statement. For all these reasons, he opposed the application seeking recall of the order. He also objected to the contention of the applicant that Sanjay Dilip Patil was aware of the dispute and the stand of the applicant in this regard.

5. Be that as it may, it appears that not all the properties were disposed of. In this view of the matter and in the light of the averments made in the application that the Advocate on record on behalf of applicant made an incorrect statement without proper instructions, the order dated

09/03/2018 passed by this Court needs to be recalled.

6. Mr.Manoj Patil however fairly stated that since he is appearing on behalf of the respondents No.1 & 3, the Appeal would not abate as recorded by this Court in the order dated 09/03/2018. In this view of the matter, the application is allowed and the order dated 09/03/2018 is recalled. Let the Second Appeal be heard on merits.

7. List the Appeal under the caption “for directions” on 25/07/2019.

8. Needless to mention that all contentions are kept. It is made clear that the effect of the consent terms as well as sale of the properties under the consent terms are issues which the parties are entitled to agitate at the time of final hearing.

9. Civil Application is allowed.

(M.S.KARNIK, J.)