

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

FIRST APPEAL NO. 2545 OF 2005

Shantilal Amarchand Chordia (since
deceased through legal heirs) :

Shantabai S. Chordia & Ors.

....Appellants

V/s.

Ashish Sham Rajure & Ors.

....Respondents

Mr. T.D. Deshmukh for the appellants.

Mr. Anil Subramaniam for R.No.1.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 06th FEBRUARY, 2019.

P.C.:

. Appeal stands restored in view of the order passed in Civil Application (St.) No.24258 of 2010.

2. Mr. T.D. Deshmukh, learned counsel for the appellant submits that respondent nos.2, 3, 4 and 5 have already sold the property in favour of the appellants herein. He therefore seeks leave to delete the names of respondent nos.2 to 5. Leave is granted. Amendment to be carried out forthwith.

3. Mr. T.D. Deshmukh and Mr. Anil Subramaniam, learned counsels for the appellant and respondent no.1 submits that parties have settled

the matter amicably. They have placed on record the Consent Terms signed and endorsed by appellants and the respondent no.1. The learned counsel for the appellants has also produced the power of attorney executed by the appellants in favour of Snehal Chordia who is present. Power of Attorney is marked as 'Y' for identification. The power of attorney has been given specific powers to enter into the consent terms.

4. The Consent Terms read as under :-

“ 1. Deceased original Appellant viz. Shri. Shantilal Amarchand Chordia had filed original first appeal being aggrieved and dissatisfied by the judgment, decree and order dated 5.8.2005 passed by the learned 6th Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.1386 of 1993, whereby the suit for specific performance filed by Respondent no. 1 has been decreed.

2. It was the case of Respondent no.1 that Respondent no.s2 to 5 were original owners of Gat no. 573/2 admeasuring 1 Hectare, 70 Ares situated at village Bhose, Taluka Khed, District Pune (hereinafter referred to as “suit property” for sake of brevity). It was further case of Respondent no.1 that Respondent nos.2 to 5 had agreed to sell suit property to Respondent no.1. It was further case of Respondent no.1 that as Respondent nos.2 to 5 failed to execute sale deed in favour of Respondent no.1, Respondent no.1 filed suit for specific performance of agreement.

3. It is the case of Appellants that deceased original Appellant had purchased for consideration suit property from Respondent nos. 2 to 5 by way of a registered sale deed dated 11.3.1997 bearing registration no. 455/1997 and have entered into possession of suit property.

4. This Hon'ble Court (Coram : A.S. Oka, J.) was pleased admit the original First Appeal by order dated 19.4.2006. This Hon'ble Court was further pleased to stay the decree for specific performance passed by Learned Trial Court.

5. The original First Appeal came to be dismissed for non compliance of conditional order dated 19.4.2006. Therefore, the appellants had filed

above captioned Civil Applications for restoration and the same are pending.

6. During the pendency of above captioned Civil Application, the parties hereto i.e. Appellants and Respondent No.1 have amicably settled their dispute out of court so as to put an end to the long standing dispute. Accordingly, Respondent no.1 has executed a registered confirmation Deed dated 25.1.2019 registered in the office of sub registrar Khed 2 at Sr. no. 627/2019 in favour of present Appellants, whereby the parties have agreed as follows :-

i. Respondent no.1 has confirmed that present Appellants have become absolute owners of suit property pursuant to registered sale deed dated 11.3.1997 registered in the office of sub registered Khed at Sr. no. 455/1997 and present Appellants are in actual physical possession thereof.

ii. Respondent no.1 has withdrawn all his objections to the registered sale deed dated 11.3.1997 registered in the office of sub registrar Khed at Sr. No.455/1997.

iii. Respondent no.1 has withdrawn all his claims in the suit property by accepting registered sale deed dated 11.3.1997 registered in the office of sub registrar Khed at Sr. no. 455/1997 executed in faovur of deceased original Appellant viz. Shri Shantilal Chordia by the land owners Jagdale.

iv. Respondent no.1 has given up all the rights accrued in his favour pursuant to decree dated 5.8.2005 passed in Special Civil Suit no. 1386 of 1993 to have and to hold the suit property absolutely as owners by the appellants.

v. Respondent no.1 will not raise any dispute of whatsoever nature in future with respect to ownership and possession of present Appellants over the suit property.

vi. Respondent no1. will not claim any right of whatsoever nature in furture with respect to suit property against the appellants as well as the other respondents.

vii. Respondent no.1 confirms that since the execution of registered sale deed dated 11.3.1997 registered in the office of sub registrar Khed at Sr no. 455/1997, late Shri Shantilal Chordia i.e. the original Appellant and thereafter the present Appellants are the absolute owners of suit property and have been in possession thereof.

viii. As a consideration for releasing and / or withdrawing all the rights and / or claims of Respondent no.1 in favour of present Appellants with respect to suit property, the Appellants have paid consideration fo Rs.2,00,00,000/- to the Respondent no.1 by way of cheques more particularly mentioned in Confirmation Deed dated 25.1.2019 registered in

the office of sub registrar Khed 2 at Sr. no. 627/2019. The respondent no.1 does hereby confirm receipt of entire consideration of Rs.2,00,00,000/- and further confirms that he has no claim of whatsoever nature against the present Appellants as well as about the suit property.

ix. It is agreed that the parties would appear before this Hon'ble Court in original First Appeal and file appropriate consent terms for disposal of original First Appeal.

x. the respondent no.1 do hereby state and declare that the respondent no.1 has not entered into any assignment or any transaction to assign the rights to seek enforcement of the decree passed by the CJSD Pune in special CS no. 1386/1993 in favour of any third party in any manner. The respondent no.1 by accepting the absolute ownership and possession of late Shantilal Ambarchand Chordia over the suit property by virtue of sale deed bearing no. 455/1997 has surrendered, waived and relinquished all his entitlements in favour of the appellants forever and also has executed a registered Deed Of confirmation bearing no. 627/2019 registered in the office of sub registrar Khed 2.

xi. It is agreed that if any claim is made and / or any dispute is raised by any person claiming through Respondent no. 1 on the basis of decree dated 5.8.2005 passed in Special Civil Suit no. 1386 of 1993, the present Respondent no.1 will keep the present Appellants indemnified.

Hereto annexed and marked as Exhibit 'A' is copy of registered Confirmation Deed dated 25.1.2019.

7. The Respondent no.1 and present Appellants do hereby confirm that they have willingly settled their dispute and therefore have entered into Confirmation deed dated 25.1.2019. The Respondent no.1 and present appellants do hereby confirm and agree that they do not have any claim of whatsoever nature against each other with respect to present dispute.

8. The respondent nos.2 to 5 have already sold suit property to deceased original Appellant by registered sale deed dated 11.3.1997 for consideration. Moreover, Respondent nos. 2 to 5 have not filed any First Appeal against decree dated 5.8.2005 passed in Special Civil Suit No.1386 of 1993. Therefore, Respondent nos.2 to 5 are not required for filing present Consent Terms and hence present Appellants prays for deleting them from array of Respondents in original First Appeal.

9. Hence, Respondent no.1 and present Appellants jointly pray that Civil Application no. 1155 of 2017, Civil Application (stamp) no. 19831 of 2013 and Civil Application (stamp) no. 24258 of 2010 may kindly be allowed and original First Appeal may kindly be restored. It is further jointly prayed that impugned judgment, decree and order dated 5.8.2005 passed by learned 6th Joint Civil Judge, Senior Division, Pune in Special

Civil Suit no. 1386 of 1993 may kindly be quashed and set aside and in turn Special Civil Suit no. 1386 of 1993 may kindly be dismissed.

10. The present Consent terms may kindly be read and recorded. In view of what is stated above and also in view of Confirmation Deed dated 25.1.2019 annexed as Exhibit 'A' hereto, the original First Appeal may kindly be disposed of in terms of present consent terms. ”

5. Consent Terms are agreeable to the appellants and the respondent no.1. The consent terms are taken on record and marked as 'X' for identification. The statements made in the Consent terms are accepted as undertaking to the Court.

6. Appeal stands disposed of as per the Consent Terms. Decree be drawn accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)