

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 226 OF 2011

- 1] Santu Bandu Gunjal.
- 2] Madhukar Santu Gunjal.
- 3] Vijay Santu Gunjal.
- 4] Vitthal Santu Gunjal. ..APPELLANTS

VERSUS

- 1] Tukaram Bandu Gunjal.
[Died through L.Rs.]
- 1-1] Jijabai Tukaram Gunjal.
- 1-2] Babasaheb Tukaram Gunjal.
- 1-3] Jaya Tukaram Gunjal.
- 1-4] Sangitabai Subhash Sirsath.
- 1-5] Latikabai Bandu Tandale.
- 1-6] Sunita Laxman Bhagat
- 1-7] Chhaya Apparao Gande
- 2] Fakirrao Bandu Gunjal.
- 3] Rukhmanbai Fakirrao Gunjal.

.. RESPONDENTS

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Mr.V.R.Dhorde, Advocate for the appellants.
Mr.Shaikh Tarek Mobin H., Advocate for the
respondents.

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CORAM : V.L.ACHLIYA,J.
DATE : 05.03.2020

PER COURT :

1] Learned counsel for the appellants and respondents seek permission to replace the name 'Tukaram Bandu Gunjal' by the name 'Babasaheb Tukaram Gunjal' in para no.3 of the terms of compromise. Since the mistakes are typographical, the advocate representing the parties are permitted to correct the same and correction be carried out forthwith and same be attested by advocate representing the parties.

2] Parties present with their respective advocates. Consent terms filed on record are marked as "X collectively" for identification.

3] Parties present admit their respective signatures/thumb impressions over the terms of compromise and further admit the contents of the same are recorded truly and correctly as settlement reached between them. They further admit that the terms of consent were explained to them by their respective advocates in the language known to them and same has been recorded truly and correctly as per the settlement reached between them.

4] The terms of compromise also signed by the Advocates representing the parties. The advocates representing the parties identify their respective clients present before the Court.

5] Pursuant to the order dated 21.01.2020, the parties appeared before the Registrar [Judicial] for identification and verification of terms of compromise. After due verification and identification of the parties, the Registrar [Judicial] has submitted report, which is marked as 'Y' for identification.

6] On interaction with the parties, it appears that the settlement between the parties is voluntary and they are not forced to compromise the matter. The parties have already settled the matter outside the Court and exchange deeds and relinquishment deeds in terms of settlement reached between them. The properties mentioned below though not subject matter of the suit but parties have included the same in settlement to make the complete adjudication of dispute amongst them:

Sr.No.	Particulars	Area
01.	Gut No.80 [Kanhagaon]	05 R.
02.	House No.79/2	19.05 x 21 [409.5 sq.ft.]
03.	House No.79/1	22 x 60 [1320 sq.ft.]
04.	House No.81	33 x 15 [495 sq.ft.]
05.	House No.243	19.5 x 34 [663 sq.ft.]

7] Learned Advocates representing the parties submit that though the above mentioned properties are not subject matter of the suit, still in terms of Order XXIII Rule 3 of the Civil Procedure Code, they are entitled to include the same in compromise, so as to make the partition of all the properties liable for partition as same were not mentioned in suit filed for partition.

8] On due consideration of the terms of compromise and the parties being related with each other and decided to put an end to the litigation commenced from the year 1996, I am of the view that the parties be allowed to

compromise the Appeal. Accordingly, following order is passed :

ORDER

- i] Appeal is allowed and disposed of in terms of compromise/consent terms filed on record and marked as 'X' collectively for identification.
- ii] In terms of the compromise, the decree passed by the Courts below are hereby set aside and the same are substituted in terms of compromise filed as 'X' collectively.
- iii] Appeal is disposed of in terms of compromise filed as 'X' collectively.
- iv] The appellants shall pay deficit court fees, if any, payable in terms of the substituted decree.
- v] Decree be drawn accordingly.

**[V.L.ACHLIYA]
JUDGE**