

Dinesh
S.
Sherla

Digitally
signed by
Dinesh S.
Sherla
Date:
2020.12.01
11:32:22
+0500

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 954 OF 2011**

Ganpat D. Sawant ...Appellant
V/s.
Balakrishna alias Balkisan
Kesu Bhondve (since deceased
through his legal heirs and ors.) ...Respondents.

WITH
CROSS OBJECTION (ST) NO. 32675 OF 2011

Mr. S.G. Kudale for the Appellant.
Mr. Sanjeev Gorwadkar, Sr. Advocate i/b Mr. Nakirat Singh Chhabra
for Respondent Nos.1 to 5.

**CORAM : K.K.TATED &
N.R. BORKAR, JJ.**
DATE : 26th NOVEMBER, 2020.
(Through V.C.)

P.C. :

1. Heard learned Counsel for the parties.
2. Mr.S.G. Kudale, learned Counsel appearing for the appellant, submits that he received instructions from his client to delete the name of respondent No.6 - Yashwant R. Kambale. Same is permitted. Amendment to be carried out immediately.
3. Both the Counsel submit that the matter is settled out of Court and they tendered Consent Terms dated 24.11.2020 duly

signed by the appellant as well as respondent Nos.1 to 5 and their respective advocates. The undertakings given by the parties in the Consent Terms are accepted. Same is taken on record and marked as "X" for identification.

4. The Consent Terms read thus:

"1. Appellant and Respondent Nos. 1 to 5 state that being aggrieved and dissatisfied by the impugned Common Judgment and Decree passed in Regular Civil Suit No. 2282 of 2000 and Regular Civil Suit No. 338 of 1996 dated 30th November, 2010 by the Ld. 2nd Joint Civil Judge, Senior Division, Pune, the Appellant/ original Defendant No. 1 in R.C.S. No. 2282 of 2000 filed the aforesaid First Appeal No. 954 of 2011 against the Judgment and Decree in R.C.S. No. 2282 of 2000 only. The Judgment and Decree in R.C.S. No. 338 of 1996 was not appealed against by the Respondent No. 6 herein Yashwant Raghunath Kamble and he accepted the dismissal of his Suit No. 338 of 1996 and consequently gave up his claim of the ownership of the suit properties i.e.

- 1) S. No. 219/1A
- 2) S. No. 213/1A
- 3) S. No. 220/1A
- 4) S. No. 127/1A
- 5) S. No. 98/1+2+3/1

At Mouje Ravet, Tal. Haveli, District: Pune.

2. The said Yashwant Raghunath Kamble was Defendant No. 2 in RCS No. 2282 of 2000, which was filed by Respondent Nos. 1 to 5 herein. Therefore he has been impleaded as Respondent No. 6. However, he did not file written statement in R.C.S. No. 2282/2000, nor filed any Cross Objections in the instant First Appeal. Respondent No. 7 herein namely Shalan Chandrakant Hushare was not a party in R.C.S. No. 2282 of 2000. She was impleaded as Defendant No. 3 in R.C.S. No.

338 of 1996. Appellant states that she was impleaded in the instant First Appeal inadvertently. Appellant and Respondent Nos. 1 to 5 herein therefore delete the names of Respondent No. 6 Yashwant Raghunath Kamble and Respondent No. 7 Shalan Chandrakant Hushare respectively from the First Appeal No. 954 of 2011. Respondents Nos. 1 to 5 i.e. legal heirs of Orig. Plaintiff in RCS No. 2282 of 2000 have filed Cross Objections in First Appeal No. 954 of 2011 and have claimed the ownership of the suit land. Consequently, Respondent Nos. 1 to 5 delete the names of Respondent Nos. 6 and 7 from the Cross Objections (St.) No. 32675 of 2011 as well.

3. The parties agree as under:-

The Respondent No. 1 (a) to (e) are brought on record as the legal heirs of deceased Respondent No. 1 Shivaji Balkrishana Bhondve.

(a) Appellant and Respondent Nos. 1(a) to 1(e) to 5 states that, the aforesaid suit properties were owned by one Govind Gangaram Kamble. After his death, the said suit property was inherited by his widow Manjulabai and his married daughter Tarabai.

(b) Parties state that, in the year 1968, Manjulabai and Tarabai filed Special C.S. No. 181 of 1968 against Raghunath Gangaram Kamble who was the brother of deceased Govind. The said suit was for possession u/sec. 6 of the Specific Relief Act.

(c) Parties state that, the said Suit No. 181 of 1968 was compromised on 10.07.1969. In the said compromise, Manjulabai received 11 Acres 3 Gunthe land in S. No. 102 out of 18 Acres and 6 gunthe land. Apart from that Manjulabai received 1/2 share in the rest of the family lands which are the aforesaid suit lands in the instant suit i.e. R.C.S. No. 2282 of 2000. Accordingly M.E. No. 1381 dated 20.08.1969 was recorded in the names of Manjulabai and Tarabai for the suit property jointly as per the said

compromise. Both Manjulabai and Tarabai were enjoying the suit properties herein as the owners since then.

(d) Parties state that, thus since 10.07.1969, the branch of Raghunath Gangaram Kamble had no right in the suit property, nor any of members of his branch were in possession.

(e) Parties state that, Balkrishna Bhondve was the tenant in occupation of the said suit property since the year 1963. He was giving "Khand" i.e. part of the crop to Manjulabai and Tarabai.

(f) Parties state that, Tarabai died without any children and Manjulabai was the only legal heir being her mother. Thus, the entire property was owned by Manjulabai.

(g) Before her death Manjulabai bequeathed the suit property to Balkrishna Bhondve on 28.08.1992 by "The Will".

(h) Parties state that, on 25.11.1995 Manjulabai died. Balkrishna Bhondve and his family members continued in possession of the suit properties as the owners.

(i) However, Appellant Ganpat Sawant also claimed ownership of the suit property on the basis of one alleged supplementary Will dated 29.09.1995 of deceased Manjulabai.

(j) Parties state that, on 29.02.1996, Yashwant Raghunath Kamble, son of Raghunath Gangaram Kamble, filed RCS No. 338 of 1996 for declaration of his ownership with respect to the suit property against Balkrishna Bhondve. (Later on Appellant Ganpat Sawant and sister of Yashwant Raghunath Kamble by name Shalan Hushare were impleaded).

(k) Parties state that on 20.09.1996, Balkrishna Bhondve filed RCS No. 1742/1996 (new RCS No. 2282/2000) for declaration of his ownership with respect to the suit property

on the basis of Will of Late Manjulabai dated 28.08.1992 against Ganpat Sawant and Yashwant Kamble. In the said suit, Appellant Ganpat Sawant claimed ownership of the suit property on the basis of supplementary Will dated 29.09.1995 purportedly executed by Manjulabai. One Shalan Hushare, daughter of Raghunath Gangaram Kamble and sister of Yashwant Raghunath Kamble, impleaded herself. (Even though the rights of the branch of Raghunath were extinguished on 10.07.1969). The said Suit was later renumbered as R.C.S. No. 2282/2000. During the pendency of the said suit original Plaintiff, Balkrishna Kesu Bhondve died and his legal heirs i.e. Respondent Nos. 1 to 5 were brought on record.

(l) Parties state that, both the suits were tried together and decided by the Common Judgment on 30.11.2010 by the 2nd Jt. Civil Judge, Senior Division, Pune.

(m) The Suit bearing R.C.S. No. 338 of 1996 filed by Yashwant Raghunath Kamble was dismissed and R.C.S. No. 2282 of 2000 filed by Balkrishna Bhondve was partly decreed.

(n) The Supplementary Will dated 29.09.1995 propounded by Appellant/ Defendant No. 1 in R.C.S. No. 2282 of 2000 has been held to be not binding on Plaintiff Balkrishna Bhondve.

(o) Appellant/ Defendant No. 1 Ganpat Sawant and Defendant No. 2 Yashwant Kamble were permanently restrained from interfering with the possession of Plaintiff i.e. legal heirs of Balkrishna Bhondve i.e. Respondent Nos. 1 to 5 herein.

(p) However, claim of Respondent Nos. 1 to 5/ Plaintiffs about the title to the suit property was rejected.

(q) Against the said Judgment and Decree in RCS No. 2282/2000, the Appellant/ Defendant No. 1 filed the aforesaid First Appeal No. 954 of 2011.

(r) Respondent Nos. 1 to 5 in capacity of the legal heirs of Balkrishna Bhondve have filed the Cross Objection No. 32675 of 2011 in the First Appeal No. 954 of 2011 and claimed title to the suit land. Respondent Nos. 6 & 7 who were Defendants in R.C.S. No. 2282 of 2000 have not filed any Cross Objections nor any Appeal. Parties state that, Yashant Raghunath Kamble did not file any Appeal against the dismissal of R.C.S. No. 338/1996.

(s) The First Appeal No. 954 of 2011 was admitted. During the pendency of the aforesaid First Appeal and Cross Objection, Respondent No. 1 Shivaji Balkrishna Bhondve died. Respondent Nos. 1(a) to 1(e) are the legal heirs of Shivaji B. Bhondve.

(t) Parties state that in view of finality of the decree in R.C.S. No. 338 of 1996, names of Yashwant R. Kamble and Shalan Hushare are hereby deleted as Respondent Nos. 6 & 7 respectively.

(u) On 12.05.2018, Respondent No. 1 Shivaji Balkrishna Bhondve died. His legal heirs 1(a) to 1(e) are brought on record.

4. Now all the parties state that during the pendency of First Appeal No. 954 of 2011 the parties i.e. Appellant and Respondent Nos. 1 to 5 have compromised the dispute on following terms.

(A) It is agreed between Appellant and Respondent Nos. 1(a) to 1(e) to Respondent Nos. 2 to 5 that names of Respondent Nos. 6 & 7 in the instant First Appeal No. 954 of 2011 are deleted from the array of parties since their claim to the suit properties have been rejected by the Trial Court and they have not challenged the dismissal of R.C.S. No. 338 of 1996 nor filed any Cross Objection in First Appeal No. 954 of 2011. Moreover, their father Raghunath Gangaram Kamble had given up his share in the suit property in the year 1969 itself and had admitted that the suit property was exclusively owned by

Manjulabai and Tarabai.

- (B) *Appellant hereby admit and unequivocally accepts that Respondent Nos. 1 (a) to 1(e) to Respondent Nos. 2 to 5 herein are the exclusive joint owners of the suit properties i.e. S. No. 219/1A, 213/1A, 220/1A, 127/1A and S. No. 981/1+2+3/1 at Mouje Ravet, Tal. Haveli, District: Pune. Appellant undertakes to this Hon'ble Court that he will not question the exclusive title of the Respondent Nos. 1(a) to 1(e) to Respondent Nos. 2 to 5 herein with respect to the suit property in any manner whatsoever and Cross Objection (St.) No. 32675 of 2011 and Suit No. 2282 of 2000 stand decreed as prayed for by the Respondent Nos. 1(a) to 1(e) and 2 to 5 herein.*
- (C) *Appellant undertakes to this Hon'ble Court that, if any third party claims right, title or interest in the suit property through the Appellant, such third party claim will be resolved/ settled by the Appellant without any prejudice to the rights of Respondent Nos. 1(a) to 1(e) to Respondent Nos. 2 to 5 herein.*
- (D) *Appellant undertakes to this Hon'ble Court to indemnify Respondent Nos. 1(a) to 1(e) to Respondent Nos. 2 to 5 from any third party, claim in respect of the suit property and further undertakes to this Court that Appellant or his agents or persons claiming through him will not interfere with the exclusive possession of Respondent Nos. 1(a) to 1(e) and Respondent Nos. 2 to 5 in the suit property.*
- (E) *Appellant withdraws all the right, claim, title to the suit property as pleaded in the instant First Appeal No. 954 of 2011 and R.C.S. No. 2282 of 2000 or otherwise. Appellant gives up his right, interest and/or claim on the basis of supplementary Will of Manjulabai dated 29.09.1995 or even otherwise.*
- (F) *Appellant states that the Appellant – Ganpat Dadu Sawant never had any right, title or interest in the suit property nor was he in possession of the suit property or its part*

any time before. Parties admit that since the year 1963 Late Balkrishna Bhondve was in possession of the suit property and continued in possession as the owner on the basis of the Will dated 28.08.1992 executed by Late Manjula Govind Kamble. His legal heirs i.e. Respondent Nos. 1(a) to 1(e) and Respondent Nos. 2 to 5 are in enjoyment of the suit property as the exclusive owners, free of any encumbrances with marketable title.

- (G) Appellant undertakes to abide by the decree of permanent injunction, restraining him from interfering with the possession of Respondent Nos. 1(a) to 1(e) and Respondent Nos. 2 to 5 in the suit property herein after.*
- (H) Appellant undertakes to this Hon'ble Court that he will co-operate with Respondent Nos. 1(a) to 1(e) to Respondent Nos. 2 to 5 to get the names of Respondent Nos. 1(a) to 1(e) to Respondent Nos. 2 to 5 mutated in the Revenue Record on the basis of instant Consent Decree and the Will of Late Manjulabai Govind Kamble dated 28.08.1992. Appellant admits that the said last Will of Manjulabai Govind Kamble dated 28.08.1992 is valid and Respondent Nos. 1(a) to 1(e) and Respondent Nos. 2 to 5 are the owners of the suit land and are in exclusive possession of the suit land and the Cross Objection (St.) No. 32675 of 2011 stand allowed accordingly. Consequently, the R.C.S. No. 2282 of 2000 stand decreed in its entirety as prayed by the Respondent Nos. 1(a) to 1(e) and Respondent Nos. 2 to 5.*
- (I) Appellant undertake to this Hon'ble Court that he will not object in any manner whatsoever to Respondent Nos. 1(a) to 1(e) to Respondent Nos. 2 to 5 from dealing/ transferring and/or developing & enjoying the suit property or its proceeds in any manner whatsoever.*
- (J) The First Appeal No. 954 of 2011 and Cross Objection (St.) No. 32675 of 2011 stand disposed off in above terms.*
- (K) The Undertakings are accepted.*

- (L) *Decree be drawn accordingly.*
- (M) *With no orders as to costs.*
- (N) *The Appellant is entitle to claim the refund of the Court Fee in accordance with the Rules."*

5. In view of the Consent Terms, the following order is passed.
- a. First Appeal as well as Cross Objection stand disposed of in terms of Consent Terms. The Consent Terms to be treated as part and parcel of the decree.
 - b. Refund of court fees, if any, in accordance with law.
 - c. No order as to costs.
 - d. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

[N.R.BORKAR, J]

[K.K.TATED, J]