

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 SECOND APPEAL NO.136 OF 2012
WITH CA/2079/2012 IN SA/136/2012

1. Balaprasad s/o Motilal Zanwar,
Died through its L.R's.
- 1/1. Omprakash S/o Balaprasad Zanwar,
Age : 40 years, occu. Business,
- 1/2. Jaiprakash S/o Balaprasad Zanwar,
Age: 38 years, Occu. Business,
- 1/3. Kantaprasad s/o Balaprasad Zanwar,
Age: 35 years, Occu. Business,
- 1/4. Smt. Ramkuwarbai W/o Balaprasad Zanwar,
Age: 62 years, Occu. Household.

All R/o Subhash Chowk, Parli-vaijnath,
Ta. Parli-Vaijnath, Dist. Beed.

.... APPELLANTS

V E R S U S

1. Ashabai W/o Lalchand Bora,
Age: 68 years, Occu. Household,
R/o: Parli-Vaijnath, Tq. Parli-Vaijnath,
Dist. Beed.
2. Hiralal s/o Lalchand Bora,
Age: 49 years, Occu. Business,
R/o: Parli-Vaijnath Tq. Parli-Vaijnath,
Dist. Beed.
3. Chief Officer, Municipal Council,
Parli-Vaijnath, Dist. Beed.

.... RESPONDENTS

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Mr. Sachin S. Deshmukh, Advocate for Appellants
 Mr. Mukul Kulkarni, Advocate holding for Mr. Amol S. Sawant
 Advocate for Respondents No.1 and 2
 Mr. Ganesh Mohekar, Advocate for Respondent No. 3

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CORAM : ANIL S. KILOR, J.

DATE : 16th MARCH, 2021

ORAL ORDER :-

This is an appeal arising out of the concurrent findings recorded by both the Courts below in the suit filed by the plaintiffs-respondents for declaration of ownership as regards four plots bearing House No. 1070, 1070/6, ward No. 5 out of Survey No. 32 situated at Parli-Vaijnath.

2. I have heard learned respective counsel for parties.

3. Brief facts of the present case are as follows (Parties are referred as per their status in the suit.)

The plaintiff – Ashabai, respondents No. 1 and 2 herein, filed a suit for declaration of ownership in respect of four plots bearing House No. 1070, 1070/6, ward No. 5 out of Survey No. 32 situated at Parli-Vaijnath and rectification in municipal record.

. The defendant No.2 has filed written statement and turned down all the materials allegations set out in the plaint. The suit proceeded ex-parte against defendant No.1.

. The learned trial Court, after considering the facts and oral as well as documentary evidence, partly decreed the suit, and declared the plaintiffs as owner of the suit property, vide Judgement and decree dated 30-04-2001. Against the said Judgment and decree, the defendant preferred an appeal bearing RCA No. 159 of 2001. The said appeal came to be dismissed by the learned District Judge-2,

Ambejogai, District Beed, vide Judgment and order, dated 01-12-2011, confirming the Judgment and Decree of the trial Court. The said Judgment and order is under challenge in the present appeal.

4. Mr. Sachin Deshmukh, learned counsel for the appellants argues that both the Courts below are not justified in ignoring the outcome of Judgment and Decree passed in Regular Civil Suit No. 592 of 1988, wherein it has been held by the Civil Court that Motilal and defendant No. 2 - Balaprasad are joint owners of the plots, which are subject-matter of this appeal. It is submitted that once a judicial pronouncement is there and entitlement of defendant No. 2 to the extent of one half ($\frac{1}{2}$) share in the plot-in-dispute is held, the said entitlement cannot be taken away by ignoring said judicial pronouncement.

Mr. Sachin Deshmukh, learned counsel for the appellants draws attention of this Court to the Judgment and Decree passed in Regular Civil Suit No. 592 of 1988.

5. On perusal of said Judgment and Decree, it is amply clear that the said judgment and decree was in respect of the plots/property bearing City Survey No. No. 4117, 3964 and 394. Undisputedly, in the present proceeding suit plots are plots bearing No. 1070, 1070/6, ward No. 5 out of Survey No. 32 situated at Parli-Vaijnath.

6. From perusal of the record, there is nothing to show that suit plots in Regular Civil Suit No. 592 of 1988 and suit plots in the present proceeding are the same. Even no pleadings are made in the

written statement filed by defendant No. 2 - Balaprasad, who was plaintiff in Regular Civil Suit No. 592 of 1988 in that regard.

7. In absence of any material produced by defendant No. 2 - Balaprasad to show that the plots in both the proceedings i.e. Regular Civil Suit No. 592 of 1988 and in present proceeding, are one and the same, I have no hesitation to hold that both the Courts below have rightly discarded the Judgment and Decree passed in the Regular Civil Suit No. 592 of 1988 filed by Balaprasad.

8. Thus, I do not find any illegality in the findings recorded by both the Courts below and in absence of any perversity in the Judgment and Decree passed by the Courts below, moreover, in absence of any substantial question of law involved in present matter, the Second Appeal is liable to be dismissed. Accordingly, I pass the following order :-

ORDER

- i. The Second Appeal is dismissed.
- ii. No order as to costs.
- iii. In view of dismissal of Second Appeal, nothing survives for consideration in civil application for stay, the same stands disposed of, accordingly.

(ANIL S. KILOR)
JUDGE

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