

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**923 SECOND APPEAL NO.590 OF 2019**

SOU. ALKA NAMDEO KADU, DIED THR LRS NAMDEO AND OTHERS

VERSUS

SOU. MANDABAI W/O REVANNATH GADE AND ANOTHER

...

Mr. A.R. Borulkar, Advocate for appellants

Mr. V.V. Tarde, Advocate for the respondent No.1

Mr. R.V. Naiknaware, Advocate for the respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 13<sup>th</sup> AUGUST, 2021.**

**ORDER :**

1 Present appeal has been filed by the original defendants challenging the concurrent Judgment and Decree.

2 Present respondent No.1 is the original plaintiff, who had filed Regular Civil Suit No.179/2009 before Joint Civil Judge Junior Division, Rahuri for declaration and injunction. The declaration that was sought was that the defendant No.1 by illegal and wrongful means got Regular Civil Suit No.89/2007 compromised and decreed in respect of house property Nos.1940 and 1941, which were situated in Gat No.346/1 of village Rahuri

(Bk), Tq. Rahuri, Dist. Ahmednagar. The present respondent No.2, the Municipal Council was made party to the said suit i.e. Regular Civil Suit No.179/2009, restraining it from entering the name of defendant No.1 in the assessment extract of the house properties, on the basis of decree drawn in Regular Civil Suit No.89/2007. The said suit has been decreed by Joint Civil Judge Junior Division, Rahuri on 21.10.2011 and the appeal filed by the present appellants i.e. Regular Civil Appeal No.445/2011 has been dismissed by learned Adhoc District Judge-2, Ahmednagar on 23.10.2018.

3            Heard both sides. In order to cut short, it can be said that learned Advocate for the appellant submitted that substantial questions of law are arising in this case, whereas the learned Advocate for the respondent No.1 supported the reasons given by the Courts below.

4            It is to be noted from the Judgment passed by the learned Trial Judge that a specific issue was framed that, "Does plaintiff prove that the defendant No.1 got Regular Civil Suit No.89/2007 decreed by wrongful and illegal means ?" It was answered, "In the affirmative". Certified copy of compromise decree drawn in Regular Civil Suit No.89/2007 was filed at Exh.42. Important point to be noted is that original plaintiff-present respondent No.1 was not a party to Regular Civil Suit No.89/2007. Plaintiff had come with a case that she is the owner and possessor of Sy.No.346/1.

House property Nos.1940 and 1941 are situated in the said survey number, which are stated to be belonging to her. It was the further case of the plaintiff that those house properties were shown in the name of one Shridhar Damodar Modhe in the Municipal record. Said Shridhar expired in 1997 and was not residing in the suit property. He was residing at village Taklimiya since last about 40-50 years prior to his death. He had no right, title or interest over the house property. However, taking disadvantage of the name of said Shridhar Modhe, the said suit was filed and defendant No.1 got compromised decree. Said Shridhar Modhe was the father of defendant No.1. Said Regular Civil Suit No.89/2007 was filed by the brother of defendant No.1 for partition and separate possession of their ancestral properties. Initially, the house property Nos.1940 and 1941 were not included in the hotch pot, however, by way of amendment they have been included and then the compromise has taken place. According to the plaintiff, in this case those properties could not have been included as suit property in that suit i.e. Regular Civil Suit No.89/2007.

5            Important point to be noted is that none of the parties have explained, as to why the other party to Regular Civil Suit No.89/2007 have not been made as party to this suit. Though the said contention has not been taken by defendant in written statement; yet it ought to have been seen by

both the Courts below that when declaration is sought regarding setting aside the said decree, may be in respect of a particular property; yet, those parties are necessarily to be included in the present suit. Merely because in that compromise that property has been given to the share of defendant No.1, it cannot be stated that she has got it to her share fraudulently. We cannot keep aside the role played by the other party to Regular Civil Suit No.89/2007 in arriving at the compromise. Therefore, this Court feels that those other parties to Regular Civil Suit No.89/2007 are necessary parties to the suit, and therefore, by setting aside both the decrees the matter deserves to be remanded to the Trial Court, with direction to add the other parties to Regular Civil Suit No.89/2007, to be added as defendants in this suit. Therefore, at the admission stage itself, the Second Appeal is disposed of with following directions. Hence, following order.

### **ORDER**

- 1                Second Appeal is hereby partly allowed.
- 2                Judgment and Decree in Regular Civil Suit No.179/2009 passed by Joint Civil Judge Junior Division, Rahuri on 21.10.2011 and Judgment and Decree Regular Civil Appeal No.445/2011 passed by Adhoc District Judge-2, Ahmednagar on 23.10.2018 are hereby set aside.
- 3                Regular Civil Suit No.179/2009 is restored on the File of Joint

Civil Judge Junior Division, Rahuri, Dist. Ahmednagar.

4            Present respondent No.1 i.e. original plaintiff is directed to add the other parties to Regular Civil Suit No.89/2007 as 'defendants' and then the learned Civil Judge Junior Division to proceed further with the matter, by summoning those added defendants as well as allowing all the parties to lead evidence, if they desire, and then matter to be disposed of on its merits, as per law.

5            Parties to appear before Trial Court on 13.09.2021.

**( Smt. Vibha Kankanwadi, J. )**

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