

Pallavi

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

**SECOND APPEAL NO.768 OF 2022
WITH
INTERIM APPLICATION NO.20343 OF 2022**

Smt. Aarmin Mehernosh Allahabadi
Thr. POA Mancher Z. Mubarkai and Anr. ... Appellants
Versus
Shri. Pandurang Harishchandra Mestry and Ors. ... Respondents

Mr. Nitin Gangal for the Appellants/Applicant.
Ms. Namita M. Mestry for the Respondents.

**CORAM: MADHAV J. JAMDAR, J.
DATE : 8th DECEMBER, 2022**

P.C.:

1. Heard Mr. Nitin Gangal, learned counsel appearing for the Appellants and Ms. Namita Mestry, learned counsel appearing for the Respondents. Both the learned counsel states that the dispute in Second Appeal is amicably settled and they tenders consent terms executed by the Appellants and the Respondents. The said consent terms are taken on record and marked 'X' for identification. The Consent Terms read as under :-

CONSENT TERMS

- A) Appellants have filed the present Second Appeal assailing that part of the Judgment, Order and decree dated 04.04.2022, passed in Civil Appeal No. 73 of 2017 filed by Original Defendants/Respondents herein, which partly allowed it and reversed the Judgment, Order and

decree dated 28.07.2017, passed by Ld. CJJD, Dahanu in Regular Civil Suit No. 116 of 2000 (old SCS No. 28 of 1998) as well as against the dismissal of Cross Objections filed by Appellants in Civil Appeal No. 73 of 2017.

- B) After due deliberations, the parties to the present Appeal have decided to amicably settle the dispute inter-se on the following terms:
1. The Judgment, Order and Decree dated 04.04.2022 passed by Ld. District Court, Palghar in Civil Appeal No. 73 of 2017 is set aside by consent of parties herein in respect of one-half undivided share belonging to aforesaid Respondents in an agricultural land bearing Survey No. 59 H No. 14 Gut No. 305 admeasuring 3 hectares 17 R, Kharaba – 30 R situate at Village Savta, Taluka-Dahanu, District-Palghar (hereinafter shall be referred to as **“the suit property”**). The Judgment, Order and Decree dated 28.07.2017 passed by Ld. CJJD, Dahanu in Regular Civil Suit No. 116 of 2000 (old SCS No. 28 of 1998) is hereby confirmed by the parties herein subject to the modifications stated in these present consent terms.
 2. The Appellants hereby give five pay orders which are described as under, in lieu of these presents as full and final settlement of Respondents’ claim in respect of the suit property:
 - i) A demand draft bearing No. 024508, dated 06.12.2022, for an amount of Rs.4,75,000/- (Four Lakh Seventy Five Thousand Only) issued in favour of Pandurang Harishchandra Mestry;
 - ii) A demand draft bearing No.024506, dated 06.12.2022, for an amount of Rs.4,75,000/- (Four Lakh Seventy Five Thousand Only) issued in favour of Manohar Harishchandra Mestry;
 - iii) A demand draft bearing No.024505, dated 06.12.2022, for an amount of Rs.4,75,000/- (Four Lakh Seventy Five Thousand Only) issued in favour of Hareshwar Harishchandra Mestry;
 - iv) A demand draft bearing No.024507, dated 06.12.2022, for an amount of Rs.4,75,000/- (Four Lakh Seventy Five Thousand Only) issued in favour of Vidhya Vijay Mistry (on behalf of herself, Respondent No. 4b-Manish Vijay Mistry, Respondent No. 4c - Shilpa Harsh Garg);

- v) A demand draft bearing No. 024509, dated 06.12.2022, for an amount of Rs.1,00,000/- (One Lakh Only) issued in favour of Sulbha Ashok Lohar.
3. The Respondents agree and undertake to this Hon'ble Court that they have no right, title and interest in respect of the suit property on the acceptance of the full and final payment envisaged in the forgoing paragraph.
 4. The Respondents admit the contents and execution of agreement of sale deed dated 01.05.1980 executed between Appellants and Harischandra L. Sutar (Mestry) i.e. predecessor in title of Respondents.
 5. The Respondents agree and undertake to this Hon'ble Court that within one month from the date of acceptance of these consent terms by this Hon'ble Court, they themselves or through their power of attorney holder will execute registered conveyance in respect of the suit property or such part thereof in a phase wise manner in favour of Appellants or in favour of any third party, as desired by Appellants. Vide order dated 02.12.2022 passed in Interim Application No. 20342 of 2022 in the present Second Appeal, Respondent Nos. 4a, 4b, 4c and 5 were added as party Respondents being the co-parceners to the having their respective share in the suit property. Parties herein agree and undertakes to this Hon'ble Court that the added Respondents to the present proceedings will be party vendors in the conveyance/s to be executed by them as envisaged in these presents, irrespective of the fact that the name of Respondent Nos. 4a, 4b, 4c is not mutated on the revenue records of the suit property and the name of Respondent No.5 appears in the other rights columns of revenue records of the suit property.
 6. The Respondents state that they are not in possession of suit property and as such they do not claim possession in respect of the suit property.
 7. Save and except the consideration in lieu of suit property received by the Respondents, there are no monetary dues or consideration left to be received by them from Appellants and that they are satisfied with the consideration mentioned in paragraph No. 2 above.

8. The Respondents further agree and undertake to this Hon'ble Court that they will themselves or through their power of Attorney holder will make themselves available for effecting transfer of suit property or part thereof in favour of Appellants or any third party as desired by Appellants by signing deeds, documents, affidavits etc. and shall remain present before the registration authority, revenue authority or any other authority to perfect the title in respect of the suit property in favour of Appellants or the purchaser as desired by the Appellants.
9. Needless to mention that the cost and expenses towards stamp duty, registration and other allied expenses which will be incurred for effecting the aforesaid transfer/s and conveying the suit property shall be borne by Appellants alone.
 - C) Decree in terms of consent terms be kindly drawn accordingly.
 - D) The Undertaking given by parties herein be kindly accepted.
 - E) Refund of the court fees be permitted as per the rules.”
2. The Constituted Attorney of the Appellants viz. Mancher Z. Mubarkai is present in the Court. Copies of the Power of Attorney are taken on record and marked 'X1' and 'X2' for identification. Copy of Aadhar Card of Constituted Attorney Mr. Mancher Z. Mubarkai is also taken on record and marked 'X3' for identification.
3. All the Respondents except Respondent No.3 and Respondent No.4A are present in Court and they confirm the contents of the consent terms. Copy of Aadhar Cards of all the Respondents are also taken on record and marked 'X4' Colly. for identification.
4. The consent terms are signed by all the parties including

Respondent No.3 and Respondent No.4A. The learned Advocate appearing for the Respondents states that the consent terms are read over to the Respondents by translating the same in Marathi and they have understood the contents of the same. The Respondents who are present in the Court also confirm about the same. Respondent No.3 and Respondent No.4A who are family members of the other Respondents are senior citizens and therefore, not present today.

5. In view of the consent terms, the decree passed by the learned District Judge – 2, Palghar in Civil Appeal No.73 of 2017 dated 4th April 2022 is quashed and set aside and the judgment and decree dated 28th July 2017 passed by the learned Joint Civil Judge, Junior Division, Dahanu in R.C.S. No.116 of 2000 (old SC Suit No.28 of 1998) is confirmed.

6. In view of this, Second Appeal is disposed of in terms of the Consent Terms with no order as to costs. The undertakings given by the respective parties are accepted. It is recorded that the demand drafts mentioned in clause 2 of the consent terms are handed over to the Respondents in the Court. Refund of Court fees, as per Rules.

7. As the Second Appeal is disposed of, nothing survives in the Interim Application and the same is disposed of accordingly.

(MADHAV J. JAMDAR, J.)