

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

**SECOND APPEAL NO. 731 OF 2019
WITH
CIVIL APPLICATION NO. 1135 OF 2019
IN
SECOND APPEAL NO. 731 OF 2019**

Mr. Partipan Jagannathan Devendra Appellant
v/s.
Mr. Dilip Dagdoba Khopade Respondent

Mr. Dipen Furia i/b. Shah and Furia Associates for the Appellant.
Mr. Rushikesh S. Kale for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 09th MARCH, 2022.

P. C. :-

. The Respondent who was the plaintiff in the suit has filed a suit for declaration that the oral Agreement for Sale dated 10/07/2007 has been cancelled. The said suit was contested by the Appellant herein and was dismissed by the Trial Court vide judgment dated 09/03/2011. The Appeal filed by the Respondent came to be allowed by judgment dated 30/10/2017. The Appellate Court set-aside the judgment of the Trial Court and decreed the suit. Being aggrieved by the said judgment, the Appellant/defendant in the suit has filed the Second Appeal.

2. Mr. Dipen Furia, learned counsel for the Appellant and Mr. Rushikesh Kale, learned counsel for the Respondent have stated that during the pendency of this Appeal, parties have arrived at an amicable settlement. They have placed on record the consent terms which are signed by the Appellant and Respondent and by their respective advocates. The relevant clauses of consent terms read thus :-

“ 10. The Appellant / Original Defendant herein has agreed to hand over to Respondent / Original Plaintiff quiet, vacant and peaceful possession of the suit premises.

11. In consideration of return of possession of suit premises, the Respondent / Original Plaintiff has paid to Appellant / Original Defendant a sum of Rs.60,000/- (Rupees Sixty Thousand Only) by Cash on execution of this Consent Terms and further permits the Appellant / Original Defendant to withdraw from the Hon'ble Court of Civil Judge (Senior Division) at Vasai the sum of Rs.1,40,000/- (Rupees One Lakh Forty Thousand Only) and all interest accrued thereon till date of withdrawal of said amount.

12. The Respondent / Original Plaintiff agrees, confirms, declares and undertakes that the Appellant / Original Defendant shall be entitled to withdraw the sum of Rs.1,40,000/- (Rupees One Lakh Forty Thousand Only) and all interest accrued thereon till date of withdrawal of same, which amount was deposited by Respondent / Original Plaintiff before the Hon'ble Court of Civil Judge (Senior Division) at Vasai in execution proceedings.

13. The Appellant / Original Defendant agrees, confirms, declares and undertakes to hand over quiet, vacant and peaceful possession of the suit premises to the Respondent / Original Plaintiff upon withdrawal and realization of Rs.1,40,000/- (Rupees One Lakh Forty Thousand Only) and all interest accrued thereon till date of withdrawal of same as recorded in clause 11 and 12 above.

14. The Respondent / Original Plaintiff further agrees, confirms, declares and undertakes to this Hon'ble Court that he shall seek possession of the suit premises from the Appellant / Original Defendant only on realization of all amounts as recorded in clause 11 and 12 above.

16. The Respondent / Original Plaintiff further agrees, confirms, declares and undertakes to this Hon'ble Court that he shall withdraw the execution proceedings from the Hon'ble Court of Civil Judge (Senior Division) at Vasai within a period of seven days from execution of this Consent Terms.

17. The parties shall not be entitled to raise rival claims or counter claims against each other in future and the dispute and subject matter of the Special Civil Suit No.156 of 2008 before the Hon'ble Court of Civil Judge (Senior Division) at Vasai shall be deemed as fully and finally settled between the parties in view of these consent terms.

18. The Parties hereto further agree, confirm and declare that all terms, conditions and arrangement of settlement arrived by and between the parties hereto prior to the date of execution hereof and all documents and correspondence exchanged between them hereto before, shall henceforth be treated as cancelled and repudiated.

19. It is hereby specifically agreed and declared by and between the parties hereto that all the final terms and conditions of the settlement have been recorded in these presents and any variation thereto would be valid and binding only if the same are duly recorded in writing and signed by the parties herein.

20. The Second Appeal No.731 of 2019 be treated as withdrawn as against Respondent / Original Plaintiff. The Second Appeal No.731 of 2019 before this Hon'ble Court as well as the Special Civil Suit No.156 of 2008 before the Hon'ble Court of Civil Judge (Senior Division) at Vasai stands disposed off in terms of present Consent Terms. A decree shall be drawn in view of this Consent Terms. ”

3. The Appellant and the Respondent are present before this Court. They have identified their signature on the said Consent Terms and have accepted the consent terms. In the light of the above, the consent terms are taken on record and marked as 'X' for identification. As per the consent terms, the Appellant – original defendant is permitted to withdraw sum of Rs.1,40,000/- with interest accrued thereon which was deposited before the Trial Court by the Respondent – plaintiff. In view of the consent terms, the Appellant seeks leave to withdraw the Appeal. The Appeal is disposed of as withdrawn. Civil/Interim Application, if any, stands disposed in view of withdrawal of the Appeal.

PREETI
H JAYANI

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PREETI H JAYANI
Date: 2022.03.11
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(SMT. ANUJA PRABHUDESSAI, J.)