

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH AT NAGPUR**

SECOND APPEAL NO. 741 OF 2017

1) Suresh Kumar S/o. Raghunathrao Jadhav,

Aged about 63 years,

Occupation - Agriculturist,

R/o. Mukkam – Boripipardahi,

Tahsil – Nainpur, Distt. Mandla

(Madhya Pradesh)

Deceased Appellant No. 1's LRs.

1(A) Smt. Urmila Wd/o. Suresh Jadhav,

Aged about 62 years, Occ. Household,

1(B) Rahul S/o. Suresh Jadhav,

Aged about 35 years, Occ. Agriculturist,

Both R/o. Gram Bori Pipardahi,

Post Jamgaon Block, Tah. Nainpur,

Dist. Mandla, Madhya Pradesh – 481776

1(C) Mrs. Joshna W/o. Rakeshrao Maratha,

(Daughter of Suresh Jadhav),

Aged about 37 years, Occ. Household,

R/o. Pindrai, Chawdi Seoni, Seoni,

Madhya Pradesh – 480661

2) Anant Kumar S/o. Raghunathrao Jadhav,

Aged about 56 years,

Occupation - Private,

R/o. C/o. Babasahab Nimbalkar,

Kotwali Ward, Jail Road, Tahsil and

District – Chandrapur

Deceased Appellant No. 2's LRs.

2(A) Smt. Vijaya Wd/o. Anantrao Jadhav,

Age 58 years, Occ. Household,

2(B) Shubham S/o. Anantrao Jadhav,

Age 27 years. Occ. Private,

2(C) Nikhil S/o. Anantrao Jadhav,

Age 43 years, Occ. Private,

All r/o. Kotwali Ward, Jail Road, Near Saraswati

Coaching Classes, Chandrapur, Maharashtra

PIN – 442001

3) Smt. Prabha W/o. Nareshrao Limse,
Aged about 58 years, Occ. Housewife,
R/o. C/o. Diliprao S/o. Sheshraoji
Dobole, Near Ganesh Vyayamshala,
Ganeshpeth, Tah. & Dist. Nagpur

... **Appellants**

.. **Versus** ..

1) Vijay S/o. Manoharrao Naik,
Aged about 48 years, Occ. Agriculturist,

2) Diwakar S/o. Vitthalrao Naik,
(Since deceased, LRs. on record)

2-A) Smt. Ushabai Diwakarrao Naik,
Aged about 52 years, Occ. Housewife,

2-B) Shri Uday S/o. Diwakarrao Naik,
Aged about 30 years, Occ. Private,

2-C) Ku. Mrunali Diwakarrao Naik,
Aged about 25 years, Occ. Not known,

All R/o. At Khadgaon, Post – Fetri,
Tahsil – Nagpur (Gramin)
District – Nagpur

3) Smt. Shobha W/o. Babasaheb Jadhav,
Aged about Major, Occ. Household,
R/o. C/o. Dr. Mangesh Babasaheb Jadhav,
Professor Colony, Savidi, Near
Samarth Mandir School, Ahmadnagar,
Maharashtra

4) Smt. Sulbha W/o. Prakashrao Sureshe,
Aged about Major, Occ. Household,
R/o. Plot No. 186, Nelco Society,
Subhash Nagar, Hingna Road, Nagpur

5) Smt. Vibha W/o. Purushottam Gaikwad,
Aged about Major, Occ. Advocate,
R/o. Arjun Apartment, Gaikwad
Building, Untkhana Road, Chandan
Nagar, Nagpur

6) Shri Hasmukhbhai Rathod,
Aged about Major, Occ. Not known,
R/o. Plot No. 12, Trimurti Nagar, Ring
Road, Nagpur

...Respondents

Shri B.K.Pal, Advocate for appellants.
Shri S.P. Kshirsagar, Advocate for respondent no. 1.

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 20/12/2022

ORAL JUDGMENT

Heard both the parties at length.

2. The present matter was admitted by this Court on 30/08/2018, on the following substantial questions of law:-

“A) When the lands at Gumthala were not the subject matter of S.C.S. No.346/1991 which ended in compromise with Kamlabai giving up her share in the properties at Khadgaon and M.H. No.29, whether the suit for partition of the properties at Gumthala was liable to be dismissed?

B) Whether the effect of the proceedings for determination of surplus lands which culminated after S.C.S.No. 346/1991 was compromised has been taken into consideration by the Courts?”

3. It appears that Spl. Civil Suit No. 346/1991 was filed by Smt. Kamlabai, wherein she had claimed partition, separate possession and accounts. Along with the suit, the schedule of property was given/filed which is described as under:-

Schedule of Suit Property

(1) Suit House bearing Municipal Corporation No. 191 situated in Ward No. 29, Nagpur.

(2) Agricultural Fields:-

Survey Nos. : 14 admeasuring about

Survey Nos. : 30 admeasuring about

Survey Nos. : 59 admeasuring about

Survey Nos. : 61 admeasuring about

Survey Nos. : 116 admeasuring about

All survey numbers are situated at village Khadgaon, Tahsil & Distt. Nagpur.



4. The said civil suit was disposed of in view of the compromise arrived at between the parties. The plaintiff Kamlabai given up her claim/share in respect of suit property. Later on, she through her sons and daughter filed another suit vide Spl. C.S. No. 228/2008 for partition and separate possession. The said civil suit as well as the appeal came to be dismissed and the plaintiff has no *locus standi* to contest the suit. The suit is also rejected on the ground that it is barred by provisions of Order II Rule 2 of C.P.C. as the entire claim for which the plaintiff is entitled was not claimed in the first suit.

5. Earlier the suit was compromised and she has given up her claim of partition. The appeal carried out by the plaintiff also came to be dismissed confirming the findings recorded by the Trial Court. While dismissing the suit as well as the appeal, in my considered opinion, both the Courts failed to consider that the properties at Gumthada, Tahsil-Nagpur (Gramin), District-Nagpur were not the subject matter of earlier suit which was compromised between the

parties. It was also not considered by the Trial Court as well as the Appellate Court that there was proceedings for determination of surplus land which was concluded after Spl. Civil Suit No. 346/1991 was compromised.

6. As such, it was necessary for both the Courts below to consider, what is the effect of pending proceedings for determination of surplus land. As both the Courts below failed to consider these aspects that in the second suit, though partition of total land is claimed, the claim of plaintiff in respect of Gumthala property can be considered.

7. Thus, both the judgments passed by the learned Trial Court i.e. 2nd Jt. C.J.S.D., Nagpur in Spl.C.S.No. 228/2008 on 25/03/2014 as well as learned Appellate Court i.e. District Judge-12, Nagpur in RCA No.331/2014 on 20/10/2016 are liable to be set aside. The present matter needs to be remanded back to the Trial Court to consider above aspects and to decide the issue accordingly. Accordingly, I proceed to pass the following order:-

ORDER

- (1) The present Second Appeal is partly allowed.
- (2) The judgment and decree passed by the learned District Judge-12 at Nagpur in R.C.A. No. 331/2014 dated 20/10/2016 and the judgment and decree passed by the learned 2nd Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 228/2008 dated 25/03/2014 are hereby quashed and set aside.
- (3) The Trial Court is directed to re-admit the suit on its original number and decide afresh in view of above observations.
- (4) Parties to appear before learned Trial Court on 16/01/2023.

(5) The appeal stands disposed of.

[SMT. M.S. JAWALKAR, J.]

B.T.Khapekar