

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

CIVIL APPLICATION [CAS] NO.108 OF 2022

IN

SECOND APPEAL [S.A.] NO.42 OF 2012

[Anil Pundlikrao Meghe since deceased through L.Rs. .vs. Prabhakar s/o Shyamrao Manikkule and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D.R. Bhoyar, Advocate for appellants,
Mr. R.R. Dhawad, Advocate for respondent nos.1 to 4.

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Coram : Smt. M.S. Jawalkar, J.

Reserved on : 04.02.2022.

Pronounced on : 09.02.2022.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper. The parties were identified by their respective counsels.

2. The present application is filed by appellant i.e. legal representatives of original defendant no.1 and respondents–original plaintiff nos.1 to 4 jointly under Order XXIII, Rule 3 of the Code of Civil Procedure for passing of compromise decree.

3. In pursuance to the agreement executed between parties on 25.10.2021, the present application is moved jointly. The copy of mutual agreement placed on record.

4. Respondent nos.1 to 4 are original plaintiffs, who filed a suit for cancellation of sale deed dated 13.02.1990 executed by deceased Dadarao Manikkule in the capacity of power of attorney holder of respondent nos.1 to 4. The said suit came to be decreed on 07.09.2009, wherein joint Civil Judge, Senior Division, Wardha held that since the power of attorney executed by the respondent nos.1 to 4 (original plaintiffs) dated 04.01.1990 was already withdrawn by issuing notice dated 20.06.1989 which was also published in the daily local newspaper, said deceased Shri Dadarao Manikkule had no any authority, right or power to execute the sale deed dated 13.02.1990. Accordingly, the sale deed dated 13.02.1990 was set aside and declared the same as null and void. Original defendant no.1 filed appeal before District Judge, Wardha, the same came to be dismissed and judgment and decree passed by the learned Trial Court came to be confirmed.

5. Being aggrieved by the said order, defendant no.1 filed the present appeal. During the pendency of this Second Appeal, appellant–original defendant no.1 expired. His legal heirs were brought on record. Shri Bhaurao Manikkule also expired on 30.05.2019 and his legal representatives also brought on record. The parties i.e. legal representatives of appellant and respondent nos.1 to 4 arrived at amicable settlement

and executed an agreement dated 25.10.2021. So far as respondent nos.5 to 9 are concerned, they are legal representatives of deceased Dadarao Manikkule, who was the power of attorney holder of respondent nos.1 to 4. However, by the judgment and decree passed by the courts below, the said impugned sale deed dated 13.02.1990 came to be set aside as the power of attorney executed by legal representatives of Shamrao (respondent nos. 1 to 4) was already revoked by the plaintiff before the execution of impugned sale deed. Thus, they are not the main contesting party, but merely proper parties in the suit. They did not contest the suit, except filing written statement in the line of written statement filed by defendant no.1.

6. Through video conferencing, I have verified the facts and contents in terms of compromise from the parties and I am satisfied that the terms of compromise are in the interest of parties and there is no illegality in the said terms. It is also confirmed from the parties that the said terms arrived at voluntarily without any pressure. In view thereof, application needs to be allowed and I proceed to pass the following order :

ORDER

(i) The judgment and decree dated 07.09.2009 passed by 3rd Joint Civil Judge, Senior Division, Wardha in RCS No.237/2003, as well as the judgment and decree dated 30.09.2011 passed by the District Judge-2,

Wardha in RCA No.192/2009 are hereby set aside and the same is modified in view of the terms settled between the appellant and respondent nos.1 to 4 as produced in paragraph no.6 of the application.

(ii) Decree of compromise on the terms mutually agreed between the appellant and respondent nos.1 to 4, as produced in paragraph 6 of the application, be drawn accordingly.

(iii) There shall be no order as to costs.

(iv) Second Appeal stands disposed of accordingly.

[Smt. M.S. Jawalkar, J.]

Gulande