

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 202 OF 2015

Ramkrishna s/o Raosaheb Mote
aged 78 years, occ. Agril.,
R/o Dhamangaon, Tq. Jalkot
Dist. Latur

Appellant

Versus

1. Mohammad Kasim s/o Shaikh Mahboob
Guttedar, (Deceased through LRs)

1/1 Abdul Alim s/o Md. Kasim
aged 52 years, occ. Agriculture
r/o Ahmedpur, Tq. Ahmedpur
Dist. Latur.
2. Wamanrao s/o Shankarrao Gaikwad
aged 65 years, occ. Advocate & Agriculture
R/o Ahmedpur, Tq. Ahmedpur
Dist. Latur.
3. Abdul Khayyum s/o Mohd. Kasim
(Deceased through LRs)

3/1 Shahnaj Begum Abdul Khayyum Shaikh
aged 65 years, occ. Household
r/o Rajapur Road, Near Ambedkar Hostel
Gulbarga (State of Karnataka)
4. Sufiabegum w/o Mohd. Yusuf
aged 55 years, occ. Agriculture & Household
r/o Mondha, Degloor, Tq. Degloor
Dist. Nanded.
5. Khadiyabegum w/o Alimoddin
aged 50 years, occ. Household
r/o Raj Mohammad Mohala, Udgir

Tq. Udgir, Dist. Latur.

Respondents

Ms. Rekha Choudhary, Advocate holding for Mr. S. S. Choudhary,
Advocate for the appellant.

Ms. M. D. Mhase, Advocate for respondents No. 1 and 2.

CORAM : R. M. JOSHI, J.

RESERVED ON : 13th MARCH, 2023.

PRONOUNCED ON : 21st MARCH, 2023.

JUDGMENT :

1. Appellant / original defendant No. 2 in Regular Civil Suit No. 217/1984 has filed this appeal against the compromise decree passed by the First Appellate Court in Regular Civil Appeal No. 9/2009. The said compromise was entered into between the original plaintiff and defendant No. 1.

2. For sake of convenience, the parties are referred to by their nomenclature in the original proceeding.

3. Plaintiff filed suit for possession of the suit property being land admeasuring 25 x 25 sq. ft. which is in possession of defendant No. 1. It is the contention of the plaintiff that the entire land bearing Gat No. 37/2 admeasuring 5 acres and 36 gunthas was owned by plaintiff and transaction for sale of part of the said land

was entered into between him and the co-operative society represented by its Chief Promotor i.e. defendant No. 2. Plaintiff has also claimed that he put defendant No. 1 in possession of the suit land and sought recovery of possession thereof.

4. Defendant No. 1 filed written statement conceding the factum of ownership of plaintiff over the entire land. It is further contended that there was an agreement of sale dated 4th March, 1977 with defendant No. 2, Chief Promotor of the co-operative society. He further claimed that defendant No. 2 gave possession of two plots admeasuring 100 x 70 sq. ft. each. Defendant No. 2 also filed written statement on the same line of the plea taken by defendant No. 1. It is however contended that defendant No. 1 is in possession of the plot admeasuring 100 x 70 sq. ft. which is allotted to him by defendant No. 2 on deposit of consideration of Rs. 3,000/- by defendant No. 1.

5. The learned Trial Court by passing the impugned judgment dismissed the suit and recorded finding that defendant No. 2 has failed to establish that defendant No. 1 was put into possession of land admeasuring 100 x 70 sq. ft. It is further held that defendant No. 1 is in possession of the said land. Plaintiff being aggrieved by

the said judgment preferred appeal being First Appeal No. 9/2009. Defendant No. 2 did not take exception to the judgment of the Trial Court or any finding recorded therein.

6. During the course of hearing of appeal, a compromise came to be entered into vide Exhibit 41 between original plaintiffs and defendant No. 1 Wamanrao Gaikwad. As per the said compromise, out of land possessed by defendant No. 1 he has agreed to give an area admeasuring 18 x 40 sq. ft. to the plaintiff whereas the plaintiff agreed to execute sale-deed in respect of the remaining portion of land in favour of defendant No. 1. On the basis of this compromise, an order came to be passed on 5th January, 2015, accepting the compromise and the appeal was disposed of in terms of said compromise.

7. Learned counsel for defendant No. 2 / appellant claims that the said compromise is prejudicial to the interest of this defendant and that the right of defendant No. 2 and the society over the land is likely to be affected by the said compromise. On these grounds, the compromise decree passed by the First Appellate Court is challenged. This submission is opposed by learned counsel for the

respondents contending that there is no executable decree passed by the First Appellate Court against the present appellant and hence, the appeal is not sustainable.

8. There is no dispute about the fact that the suit was filed by the plaintiffs against defendant No. 1 contending that defendant No. 1 is in possession of 25 x 25 sq. ft. area from land bearing Survey no. 37/2. Learned Trial Court however has held that defendant No. 1 is in possession of 100 x 70 sq.ft. area from the said land. Said finding recorded by the Trial Court is not challenged by defendant No.

2. Challenge thereto by plaintiff in the first appeal has finally culminated into compromise between plaintiff and defendant No. 1. The terms of compromise indicate that defendant No. 1 has agreed to handover possession of 18 x 40 sq. ft. area to plaintiff out of the land held by him. As against this, plaintiff has agreed to execute sale-deed in favour of defendant No. 1 in respect of the remaining land in his possession. Even case of defendant No. 2 in written statement is that defendant No. 1 has paid consideration of Rs. 3,000/- to defendant No. 2 in respect of allotment of land admeasuring 100 x 70 sq. ft. Thus, defendant No. 2 concedes to the fact about possession of defendant No. 1 over the said area of land and at least not against the

interest of defendant No. 2. In such circumstances appellant has no locus to challenge the validity of the compromise entered into between the plaintiff and defendant No. 1.

9. Order XXIII Rule 3 of the Code of Civil Procedure deals with the compromise of suit. A Court is required to pass a decree in accordance with compromise, where it is proved to the satisfaction of the Court that suit has been adjusted wholly or in part by any lawful agreement or compromise. Here in this case, plaintiff and defendant No. 1 have voluntarily compromised the suit on terms recorded in Exhibit 41. In order to take exception thereto, appellant must show that said compromise is void or voidable under Contract Act. At least, prejudice must be shown to have caused to him by the decree of compromise. The appellant was unable to show any prejudice being caused to him by the decree passed by the First Appellate Court by virtue of compromise between plaintiffs and defendant No. 1 or that the compromise is void. Furthermore, admittedly, there is no executable decree passed against defendant No. 2. In these circumstances, defendant No. 2 has no locus to take exception to the compromise decree passed by the Trial Court.

10. This Court finds that no substantial question of law is involved in this appeal. In the result, appeal under Section 100 of the Code of Civil Procedure is not tenable. Appeal, therefore, stands dismissed with cost.

11. Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb