

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 APPEAL FROM ORDER NO.11 OF 2016
WITH CA/14215/2015 IN AO/11/2016

ADINATH SANDEEP NALKAR AND OTHERS
VERSUS
BABAN DEORAM PATHARE

...
Advocate for Appellants : Mr. Karpe Rahul R.
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CORAM : ARUN R. PEDNEKER, J.
DATE : 09th June, 2023

PER COURT :

1. Heard the learned Advocate for the appellants.
2. The learned Advocate for the appellants submits that the present appellant Nos.1 to 4 had filed the Civil Suit No.264 of 2009 before the Civil Judge Judge, Junior Division, Rahuri for the relief of partition, possession and perpetual injunction against present appellant Nos.5 and 6 as they were defendant Nos.1 and 2. The said Regular suit came to be decreed in view of the compromise between the parties.
3. The learned Advocate for the appellants further submits that the present respondent though had filed an application to implied himself as necessary party contending that he has purchased part of the suit

property sold by the present appellant No.5 and thus he is interested party in the outcome of the suit and the relief claimed therein. The said application came to be rejected by the Civil Judge, Junior Division, Rahuri and confirmed by this Court in Writ Petition No.1074 of 2010. The suit was compromised before the Trial Court. Thereafter, respondent No.1 filed Regular Civil Appeal No.187 of 2011 before the learned District Court, Ahmednagar, challenging the compromise decree which took place in Regular Civil Suit No.264 of 2009.

4. The learned District, Ahmednagar held that the defendant is the necessary party to the suit and as such set aside the order of the Trial Court and remitted the matter back for fresh trial on 07/01/2013.

5. It is the contention of the appellant that the respondent purchaser has independent right to adjudicate his right against the said defendants, so also the other plaintiffs, if required. However, the respondent No1 is not required in the present suit No.264 of 2009. On notice, the respondent has not appeared in the matter although the matter is pending for a long time.

6. The compromise is not limited to the property sold by the appellant No.5 to the respondents. The parties are aware of that the appellant No.1 has already sold part of the property to the respondent No.1. The respondent is not bound by the compromise decree as he is not a party to the said decree. The application for intervention is rejected up till this Court. As such, the order passed by the appellate Court remitting the matter back to the Trial court, is set aside. The respondent is entitled to defend his title to the property purchased by him in an independent proceedings as may be available in law.

7. With the above observations, the appeal is allowed and the impugned order passed by the Appellate Court is set aside. The compromise decree passed by the Trial Court is maintained, subject to the observations as above. Pending Civil application stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.