

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.509 OF 2023
WITH CA/12492/2023 IN SA/509/2023

MR RAGHUNATH BHAURAO CHAVAN DIED THR LRS POPAT
RAGHUNATH CHAUHAN AND OTHERS
VERSUS
MRS BHAGUBAI W/O KACHARU KALE DIED THR LRS TEJRAO
KACHARU KALE AND OTHERS

...
Advocate for Appellants : Mr. Gaurav L. Deshpande
Advocate for Respondents No.1/A to 1/D : Mr. L. D. Vakil
(through Video Conferencing)
...

CORAM : S. G. MEHARE, J.

DATE : 04-11-2023

PER COURT :-

1. Heard the learned counsel for the appellants and the learned counsel for the respondents.
2. The facts giving rise to the suit were that the survey/Gat No.214 was an ancestral property. The common ancestor had two sons. One of the sons had only two daughters i.e. defendants. Some portion of the suit land was acquired for percolation tank. Thereafter, one of the sisters, defendant/deceased, namely, Bhagubi had filed a suit against deceased Raghunath. In that suit, on 08.02.1990 a compromise took place and a compromise decree was passed.

3. The plaintiff had filed a suit for injunction not to create third party interest against cousin sisters who have allegedly waived their right in the joint family property on accepting entire compensation amount. He has claimed the title over entire suit lands.

4. The defendants appeared and resisted the suit and claimed that defendant No.2 Sakhubai was not the party to the compromise decree. Hence, the compromise decree is not binding upon her. Bhagubai's case was that the terms of the compromise decree were not complied with. She never waived her right in the entire joint family property. Therefore, both sisters have title and interest in the suit property.

5. The learned trial Court believed the plaintiff and decreed the suit. However, the learned first Appellate Court quashed and set aside the judgment of the trial Court and dismissed the suit with costs.

6. On hearing the learned respective counsels at length, the Court is satisfied that the appeal involves substantial questions of law.

7. Learned counsel for the appellants has formulated as many as 16 substantial questions of law.

8. Learned counsel for the respondents argued that the compromise decree was never acted upon. The properties

remained joint. The plaintiffs never complied with compromise decree. Its term does not disclose that Bhagubai had waived her share in the entire joint family property. Therefore, the learned first Appellate Court is right in recording the finding.

9. In reply, the learned counsel for the appellants would submit that the learned first Appellate Court did not discuss the issue and assign the reasons on the facts and mechanically passed its judgment and order.

10. On considering the arguments of the learned counsels, following substantial questions of law have been formulated :-

- i) Whether by way of compromise decree passed in Regular Civil Suit No.37 of 1990, Bhagubai and Sakhubai had waived their right and interest in the entire suit lands ?
- ii) Whether the failure to mutate revenue record in pursuance of the compromise decree makes the compromise decree ineffective ?
- iii) Whether the compromise decree in Regular Civil Suit No.37 of 1990 binds Sakhubai ?
- iv) Whether non registration of the decree is bad in law affect its legality and validity ?
- v) Whether the interpretation contents of the compromise decree indicates that the sisters i.e. defendants have waived their shares in the lands mentioned therein ?
- vi) Whether the first Appellate Court has correctly re-appreciated the evidence and recorded the proper conclusion?

11. **Admit.**
12. Issue notice to the respondents.
13. Mr. D. L. Vakil, learned counsel waives service of notice for the respondents.
14. Call R & P.
15. The substantial questions of law involved in this case have been formulated. Admittedly, the appellants are in exclusive possession of the suit land. The sisters were not residing in the village where the suit land is situated. Therefore, the appellants deserve stay.
16. Hence, the execution, implementation, effect and operation of the impugned judgment and decree of the learned District Judge-3, Aurangabad, passed in Regular Civil Appeal No.88 of 2018 dated 11.08.2023, is stayed till conclusion of the appeal.
17. In view of the above, Civil Application No.12492 of 2023 for stay is allowed.
18. List the Second Appeal on 30.01.2024.

(S. G. MEHARE)
JUDGE