

**Dusane**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO. 147 OF 1996  
WITH  
CIVIL APPLICATION NO. 440 OF 2010  
WITH  
INTERIM APPLICATION NO. 30512 of 2022  
WITH  
INTERIM APPLICATION NO 30513 OF 2022  
IN  
SECOND APPEAL NO. 147 OF 1996  
WITH  
SECOND APPEAL NO. 1005 OF 2007  
WITH  
INTERIM APPLICATION NO. 30510 OF 2022  
WITH  
INTERIM APPLICATION NO.30511 OF 2022  
IN  
SECOND APPEAL NO. 1005 OF 2007**

Smt. Balabai Ramu Siradvade ...Appellant

V/s.

Shri. Shankar Narayan Bargale & Ors. ...Respondents

Mr. Akshay Kulkarni for Appellant.

Mr. R.R. Patil for Respondent nos. 1A to 1D.

**CORAM: MADHAV J. JAMDAR, J.  
DATE: 5th JANUARY, 2023**

**P.C.:**

**1.** At the outset, Mr. Kulkarni, learned Counsel appearing for the Appellant seeks leave to delete names of Respondent nos.2 to 8.

**2.** Mr. Kulkarni learned Advocate appearing for the Appellant and Mr. Patil learned Advocate appearing for Respondent No. 1(A) to 1(D) tendered Consent Terms. The Consent Terms are signed by the Appellant-Somnath @ Krishna Ramchandra Shiradwade and power of attorney holder of Respondent no. 1 (A) to 1(D) i.e. Ajit Vitthal Bargale. Said Ajit is a son of Respondent No. 1(C).

**3.** Both, the Appellants and Constituted Attorney of Respondent nos. 1(A) to 1(D) are present in Court. They confirmed that the Consent Terms are drawn as per the agreement between the parties. The Consent Terms are taken on record and marked "X" for identification. The Consent Terms read as under.

### **CONSENT TERMS**

1. The Appellant in Second Appeal No. 147 of 1996 is the legal heirs/representatives of the original defendant No.1 while Respondents are the legal heirs/representatives original plaintiff in Regular Civil Suit No. 10 of 1982. The parties are hereinafter referred to as per their original status in Regular Civil Suit No. 10 of 1982.

2. The present dispute pertains to the entire agricultural lands bearing R.S. No. 296/2 & 291/6 admeasuring 0 H. 11 R & 0 H. 06 R respectively and 1/3<sup>rd</sup> share in 296/4A, 291/1A & 291/7A admeasuring 0 H. 28 R, 0 H. 7 R & 0 H. 3 R respectively situated at Miraj and

within the municipal limits of Sangli, Miraj & Kupwad City Municipal Corporation (for short '***the suit properties***') more particularly described in para 1 of the plaint i.e. Regular Civil Suit No. 10 of 1982.

3. The suit properties were originally owned by 1) Govind Ganpati Kore, 2) Balaram Ganpati Kore & 3) Vasant Ganpati Kore (for short: '*Kore Brothers*'). Kore brothers & the defendant No. 1 entered into a transaction of sale with a condition to retransfer dated 17.05.1971 in respect of suit property. Despite the earlier transaction with defendant No. 1, Kore Brothers entered into a sale deed with plaintiff in respect of the suit properties on 14.07.1981.

4. Treating the earlier transaction of Kore Brothers with defendant No. 1 as a mortgage deed, the Plaintiff filed Regular Civil Suit No. 10 of 1982 against the Defendants for reconveyance of the suit properties. The Trial Court was pleased to dismiss the suit on 21.04.1989.

5. The plaintiff challenged the said decree by way of Regular Civil Appeal No. 448 of 1989. The First Appellate Court vide impugned judgment and decree dated 31.10.1995 was pleased to allow the appeal and decreed the suit holding that transaction entered into by and between Kore Brothers and defendant No. 1 was mortgage deed and the plaintiff is entitled to redemption of mortgage of the suit properties and further directed the defendant No. 1 to execute the deed of reconveyance of the suit properties.

6. The Defendant No. 1 then filed the present Second Appeal No. 147 of 1996. The same is admitted by this Hon'ble Court on 07.03.1996. Since then, the Second Appeal is pending for final hearing.

7. However, pursuant to decree passed by the first appellate court the plaintiff filed Decree Final Application 08 of 2003 which came to be dismissed by the Ld. Trial Court vide judgment, decree and order dated 14.03.2005. The plaintiff thereafter filed Regular Civil Appeal No. 82 of 2005 against the said judgment, decree and order dated 14.03.2005 passed by the Ld. Trial Court. The First Appellate Court partly allowed the Regular Civil Appeal No. 82 of 2005 vide judgment, decree and order dated 01.10.2007 by setting aside the judgment, decree and order dated 14.03.2005 passed by the Ld. Trial Court and remanding final decree application back to the Ld. Trial Court.

8. The defendant No. 1 therefore filed Second Appeal No. 1005 of 2007 challenging the said judgment, decree and order dated 01.10.2007 passed by the First Appellate Court and the same is admitted by this Hon'ble Court vide order dated 30.07.2010. Since then, the said Second Appeal is also pending for final hearing.

9. Pending the Second Appeals, both the parties realised that they are not able to enjoy the suit properties appropriately on account of pendency of litigation and dispute between the parties. Appellant and Respondents therefore held several meetings to discuss

the terms of settlement and since the Respondents were in need of money for legal necessities, they have accepted an amount of Rs. 7,00,000/- from time to time which is to be considered as valuable consideration under the present consent terms. Therefore, both the parties agreed that instead of waiting for the final outcome of the Second Appeal, it would be in their interest to settle the present dispute amicably.

10. Accordingly, the Appellants and Respondent request this Hon'ble Court to dispose of present Second Appeal as well as Second Appeal No. 1005 of 2007, without recording any findings on the merits of the rival claims and contentions of the contesting parties and in terms of the following consent terms:-

(a) The Appellant has paid an amount of Rs. 7,00,000/- to the Respondents from time to time for their legal necessities. The Respondents accept and acknowledge the receipt of the said amount from the Appellant and further agree and accept that the same is to be appropriated and adjusted towards the full and final settlement of the dispute between the parties and towards the relinquishment of all the claims, contentions, rights, titles and interests of the Respondent in the suit land.

(b) In addition to the aforesaid amount of Rs. 7,00,000/- already paid to the Respondents, the Appellant shall pay an amount of Rs. 3,00,000/- to the Respondents towards the full and final settlement of the dispute between the parties and

towards the relinquishment of all the claims, contentions, rights, titles and interests of the Respondent in the suit land. Towards the compliance of the same the Appellant has handed over a cheque of Rs. 3,00,000/- bearing No. 043316 drawn on bank of Federal Bank, Branch Shirol, Dist. Kolhapur and the Respondents accept and acknowledge the receipt of the same.

(c) Subject to realisation of the aforesaid cheque amounting to Rs. 3,00,000/-, the Respondent also agree and undertake to execute the deed of cancellation/relinquishment deed or any other deed, agreement and/or document if so required by the Appellant in order in order to make the title of the Appellant clear and marketable. In case of failure or default on the part of Respondent in extending any assistance and co-operation to execute the deed of cancellation /relinquishment deed or any other deed, agreement and/or document if so required by the Appellant No. 1 in order in order to make the title of the Appellant clear and marketable, the Appellant shall have right to get the present consent terms/consent decree executed through the Court by filing appropriate application and/or execution.

(d) The Appellants and Respondent accept and agree that the transaction entered into by and between the Appellant and Kore Brothers on 17.05.1971 was sale with a condition to

repurchase and since the Kore brothers did not get the suit properties reconveyed the Appellant has become the absolute owner of the suit properties. The Appellant and Respondents also agreed for quashment and setting aside the contrary findings of the Ld. First Appellate Court in this regard as well as judgment, decree and order dated 31.10.1995 passed by the Ld. First Appellate Court and further to restore the findings, judgment, decree and order of the Ld. Trial Court dated 21.04.1989.

(e) The Respondents agree and undertake that all the claims, contentions, rights, titles and interests of the Respondents in the suit properties shall stand completely satisfied and the Appellant stands declared owner of the suit properties without any obstruction or hindrance or objection from and on behalf of the Respondents.

(f) The Respondents agree and undertake to cooperate fully with the Appellant in the process of making the title of the Appellant clear and marketable.

(g) All the parties have entered into and executed these consent terms voluntarily, out of their own free will and without any force, fraud, fear, undue influence and after obtaining legal advice from their own advocates. As such, these consent terms are and shall be binding on all the

parties as well as their heirs and legal representatives.

(h) All the assurances and undertakings given by the Appellant and Respondents are accepted by this Hon'ble Court. Any party, committing breach of the respective assurances/undertakings, would be liable for an action of contempt of this Hon'ble Court.

(i) The decrees passed by the Courts below may kindly be modified in terms of these consent terms with no orders as to costs. The Appellants may be granted refund of appropriate court fees.

(j) Today the Appellant is present while Respondents have signed and filed the present consent terms through their power attorney holder. Duly executed power of attorney in favour of Ajit Vitthal Bargale dated 14.03.2022 is attached to the present consent terms."

**4.** The undertakings in the Consent Terms are accepted.

**5.** The impugned judgment and decree passed by the learned Third Additional District Judge, Sangli in Regular Civil Appeal No. 448 of 1989 as well as the judgment and decree passed by learned Civil Judge, Junior Division, Miraj in Regular Civil Suit No. 10 of 1982 are quashed and set aside and the said Suit is decreed in terms of the Consent Terms.

**6.** The Second Appeal No. 147 of 1996 and Second Appeal

No. 1005 of 2007 are disposed of in terms of the Consent Terms with no order as to costs.

**7.** In view of disposal of Second Appeals, Civil Application No. 440 of 2010, Interim Application Nos. 30512 of 2022, 30513 of 2022 in Second Appeal No. 147 of 1996 and Interim Application Nos. 30510 of 2022, 30511 of 2022 in Second Appeal No. 1005 of 2007 also stand disposed of.

**(MADHAV J. JAMDAR, J.)**

Note : Corrected as per speaking to minutes order dtd. 10th January 2023.

BHALCHANDRA  
GOPAL DUSANE

Digitally signed by  
BHALCHANDRA  
GOPAL DUSANE  
Date: 2023.01.11  
18:27:10 +0530