

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.581 OF 2015
WITH
CIVIL APPLICATION (STAMP) No.23364 of 2019

VASANT
ANANDRAO
IDHOL

Digitally signed
by VASANT
ANANDRAO
IDHOL
Date: 2023.12.07
15:36:36 +0530

.Krishnaji S. Gaikwad, since deceased
through His L.Rs. - Appellant Nos.2, 5 & 8 ..Appellants
V/s.
Parvati J. Kalhapure ...Respondent

Mr.Sugandh B. Deshumukh with Mr.Vaibhav B. Tharve i/b
Mr.Rajaram Deshmukh for the Appellants.

Mr.Vikas B. Shivarkar for the Respondent.

Mrs.Parvati K. Kalhapure - Respondent present in Court.

CORAM : RAJESH S. PATIL, J.
DATE : 5TH DECEMBER, 2023.

P.C. :-

1. The papers are allowed to be produced at 2:30 p.m. in view of urgency.
2. Advocate for the Appellants (Original Defendants) tenders Memorandum of Understanding dated 13 October 2023 before this Court. Advocate for the Appellants submits that Appellant No.1 is present in Court, who is also power of attorney holder of Appellant Nos.2, 3 and 7. He further submits that Appellant No.4 is also present in Court and Appellant No.6 is present, who is also holding the power

of attorney of Appellant No.5.

3. He submits that by the Memorandum of Understanding dated 13 October 2023, the parties have settled the disputes and differences between them. He further submits that the Memorandum of Understanding has been signed by all the Appellants and he identifies the signatures of the Appellants on the Memorandum of Understanding. He also identifies his clients, Appellant Nos.1, 4 and 6, who are present in Court. The Memorandum of Understanding is taken on record and marked "X" for identification.

4. Advocate for the Respondent (Original Plaintiff) submits that his client, the sole Respondent (Original Plaintiff) is present in Court. He further submits that the entire Memorandum of Understanding has been explained by him to his client. He submits that the Memorandum of Understanding has been signed by the Respondent. He also identifies the presence of the Respondent in this Court. The Memorandum of Understanding entered into between the parties, for ease of reference has been reproduced herein below.

**IN THE COURT OF HON'BLE HIGH COURT JUDICATURE AT
BOMBAY**

Second Appeal No. 581/2015

1. Uttam Krishnaji Gaikwad and others. Appellant

V/s

1. Smt. Parvati Kisan Kalapure Respondent

MEMORANDUM ON BEHALF OF BOTH PARTIES IS AS UNDER: -

MEMORANDUM OF UNDERSTANDING (M.O.U.)

THIS MOU is made and entered into at Mumbai this _____ day of _____ in the Christian Year Two Thousand Twenty-Three (2023) between 1) Mr. Uttam Krishnaji Gaikwad, 2) Mr. Anshuman Uttam Gaikwad, 3) Mrs. Rajani Uttam Gaikwad, 4) Mr. Baliram Krishnaji Gaikwad 5) Mr. Vaisnav Baliram Gaikwad 6) Mr. Harish Baliram Gaikwad, all r/at: Jambe, Post-Tathawade, Tal. Mulshi, Dist. Pune 7) Mrs. Babita Dattatraya Garade, R/at: Dhamani, Tal. Vadgaon Muval, Dist. Pune being the Appellants who have preferred Second Appeal No. 581 of 2015 before the Hon'ble Bombay High Court, hereinafter for the sake of brevity shall be jointly referred to as "THE APPELLANTS" (which expression shall unless it be repugnant to the context or meaning thereof mean and include their successors, heirs and/or assignees) of the ONE PART.

AND

SMT. PARVATI KISAN KALHAPURE, R/at: H-7/110, HIG Scheme, Sant Tukaram Nagar, Pinpri, Pune - 411018, hereinafter for the sake of brevity shall be referred to as "THE RESPONDENT" (which term and expression shall unless it is repugnant to the context or meaning thereof shall mean and include her successors, heirs and/or assignees) of the SECOND PART.

WHEREAS

- a) The Respondent is the real sister of the Appellant No. 1, 4 and 7. The other Appellants are children of the Appellant No. 1 & 4. The Respondent had filed RCS No. 969/2006 against the Appellant before

1



the Ld. Civil Judge, Junior Division, Pune for partition of the agricultural land situated at Village Jambe, Tal. Mulshi. The said was decreed on 06.01.2012 before the Ld. Civil Judge, Junior Division, Pune.

- b) The Appellants had preferred Civil Appeal No. 204 of 2012 before the Ld. District Judge Pune against the said Judgment and Order dated 06.01.2012. The said Appeal was dismissed by the Ld. District Judge, Pune on 11.03.2015.
- c) The Appellant preferred Second Appeal No. 581 of 2015 before the Hon'ble Bombay High Court against the said Judgment and Order dated 11.03.2015. The said Second Appeal was admitted by the Hon'ble Bombay High Court on 26.09.2018. The copy of the said order dated 26.09.2018 is annexed herewith and marked as ANNEXURE- "A". The Respondent has filed Civil Application (St.) No. 23364 of 2019 in the said Second Appeal for early hearing of the Second Appeal.
- d) Pursuant to mutual discussions, the Parties hereto have now agreed to settle the above Second Appeal and to record terms and conditions of the said settlement to reflect their understanding as is hereinafter appearing.
- e) The parties hereto now desirous of recording the terms and conditions agreed by them in writing and hence this MOU.

**NOW IT IS AGREED AND UNDERSTOOD BY AND BETWEEN
THE PARTIES HERETO AS FOLLOWS:-**

- a. The aforesaid recitals form an integral part of this Memorandum of Understanding and should be read as if specifically incorporated herein.
- b. The Respondent shall be entitled for 40 Ares of land from the suit property instead of 1/5 of share in the suit property as decreed by the Ld. CJD and confirmed by the Ld. District, Pune. The description, measurement and entitlement of the said 40 Ares of land shall be as described in the following paragraphs.
- c. The Respondent shall be entitled to 30 Ares of land in S. No. 58, Hissa No. 1 out of 72 Ares of land in S. No. 58, Hissa No. 1. The copy of the plotting/plan of said proposed partition/division is



annexed herewith and marked as ANNEXURE- "B". The said plot/part of land shall be bounded as under:-

East :- The property of Mr. Gornkh Mahadev Gaikwad

West :- The property of Mr. Vasant Sahebrao Shitole

North :- The share/property of Mr. Anshuman Uttamrao Gaikwad

South :- The share/property of Mr. Harish Baliram Gaikwad

d. The Respondent shall also be entitled to 10 Ares of land in S. No. 169, Hissa No. 1 out of 62 Ares of land in S. No. 169, Hissa No.1. The said plot/part of land shall be bounded as under:-

East :- The share/property of Mr. Harish Baliram Gaikwad

West :- The property of Mr. Ashok Sudam Gaikwad

North :- The share/property of Mr. Sopan Krishna Gaikwad

South :- Survey No. 169/1, Anshuman Uttam Gaikwad

e. It is agreeable to both the parties to give easementary rights, access and other incidental rights of similar nature to each other from the date of execution of this MOU and no separate document is necessary to be executed for the same.

f. It is further agreeable to both the parties to give easementary rights, access and other incidental rights of similar nature to each other in case of future development of the said land and no separate document will be necessary to be executed for the same.

g. The Respondent hereby waives her right in the other ancestral property except the agreed 40 Ares of land and the Respondent, her successor, heir or assignee shall not be entitled to claim any right in the other ancestral property except the agreed 40 Ares of land.

3



- h. As per the judgment, the Hon'ble trial court declared 1/5th share appellant and respondent equally, the trial court declared share of respondent namely Parvati Kisan Kalhapure 1/5th share i.e. 00.72 Ares. The appellant and respondent settled the matter of our court and mutually decided the respondent namely Parvati Kalhapure shall be entitled 40 Ares and remaining 32 Ares distributed equally i.e. 00.16 Ares to brother namely Uttam Krishnaji Gaikwad and 00.16 Ares to another brother namely Baliram Krishnaji Gaikwad.
- i. Both parties do hereby agree that this MOU will be placed on records of the Second Appeal No. 581 of 2015 before the Hon'ble Bombay High Court and the Appellants would withdraw the Second Appeal No. 581 of 2015 in view of this MOU.
- j. This terms will be given effect to during the execution of the decree passed by the Ld. CJJD and both parties do hereby agree to co-operate each other in execution proceedings for the same.
- k. This Memorandum is irrevocable and binding on both parties and executed in Duplicate. Both parties have one copy of the same.
- l. Except for the above-mentioned agreement and settlement between the parties about the suit property, there is no discussion, agreement of settlement between the parties in respect of any other party than the suit property.

**IN WITNESS WHEREOF THE PARTIES HERETO HAVE
HEREUNTO SET AND SUBSCRIBED THEIR RESPECTIVE
HANDS AND SEALS THE DAY AND YEAR FIRST
HEREINABOVE WRITTEN.**

SIGNED AND DELIVERED BY THE WITHINNAMED



"APPELLANTS"

Uttam
1) Mr. UTTAM KRISHINAJI GAIKWAD,

Anshuman (P.A.)
2) Mr. ANSHUMAN UTTAM GAIKWAD,

Rajani (P.A.)
3) Mrs. RAJANI UTTAM GAIKWAD,



Baliram
4) Mr. BALIRAM KRISHINAJI GAIKWAD,

Vaishnav (P.A.)
5) Mr. VAISHNAV BALIRAM GAIKWAD,



Harish
6) Mr. HARISH BALIRAM GAIKWAD,
All r/at: Jambe, Post: Tathawade,
Tal. Mulshi, Dist. Pune.

B.K. Gaikwad
7) MRS. BABITA DATTATRAYA GARADE,
R/at: Dhamani, Tal.: Vadgaon Maval,
Dist. Pune

The party of the First Part
In the presence of



1. A. Gaikwad
2. Amit. Nikam
3. ...
4. ...
5. ...

2.

SIGNED SEALED AND DELIVERED BY THE

Parvati Kisan

WITHIN NAMED SMT. PARVATI KISAN
KALHAPURE, R/at: H-7/110, HIG Scheme,
Pimpri, Pune - 411 018.

The party of the Second Part
In the presence of



1. Amit Nikam
Amit Nikam
Amit Shalwan Nikam

2.



BEFORE ME

S. N. Kadam
S. N. KADAM
ADVOCATE & NOTARY
GOVT. OF INDIA
Fuchibazari, Wagle, Pune-411 044

Noted & Registered
at Serial Number 350/2023
13/10/2023

5. As per the Memorandum of Understanding, the Respondent would be entitled for 40 Ares of the land from the suit property instead of her 1/5 share as per the decree of the Civil Judge (Junior Division) and as confirmed by the District Court, Pune. Out of 40 Ares, she will be entitled for 30 Ares of land in Survey No.58, Hissa No.1 and Further 10 Ares of land in Survey No.169, Hissa No.1. The Appellants undertake to peacefully hand over possession of the said 40 Ares of the land to the Respondent on or before 18 December 2023.

6. The undertakings contained in the Memorandum of Understanding are accepted as undertaking given to his Court.

7. In view of the Memorandum of Understanding entered into by the parties, the Second Appeal is disposed of in terms of the Memorandum of Understanding. Pending Civil Applications, if any, are also disposed of.

8. All parties to act on the authenticated copy of this order.

(RAJESH S. PATIL, J.)