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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.135 OF 2021
WITH
CIVIL APPLICATION NO.24 OF 2021
IN
SECOND APPEAL NO.135 OF 2021**

Mr. Ganpat Kusha Naik (deceased Thr. LRs)
1/1. Mr. Ramchandra Ganpat Naik and Ors. ...Appellants
Versus
Mrs. Sadhana Rajiv Patil and Ors. ...Respondents

**SECOND APPEAL NO.189 OF 2021
WITH
CIVIL APPLICATION NO.41 OF 2021
IN
SECOND APPEAL NO.189 OF 2021**

Mr. Ganpat Kusha Naik (Deceased Thru. LRs.)
1/1. Mr. Ramchandra Ganpat and Ors. ...Appellants
Versus
Mrs. Sadhana Rajiv Patil and Ors. ...Respondents

- Mr. Parag M. Tilak, for the Appellants/Applicant.
- Mr. Satyakumar M. Shettigar, for the Respondent No.1.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 22nd FEBRUARY 2023**

P.C. :

1. Mr. Parag Tilak, learned counsel appearing for the Appellants
and Mr. Shettigar, learned counsel appearing for the Respondent No.1

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state that the Appellants and the Respondent No.1 have compromised the dispute and have executed the Consent Terms. The Consent Terms are executed by all the Appellants and the Respondent No.1.

2. Both the learned counsel state that the Respondent No.1 has purchased the property from Respondent Nos.2 to 13 and therefore, they are no more the necessary parties. Mr. Tilak, learned counsel appearing for the Appellants seeks leave to delete Respondent Nos.2 to 13 from the array of parties. Leave to delete as prayed is granted. Amendment be carried out forthwith.

3. The Consent Terms are signed by the Appellant No.1/1, Appellant No.1/3, Appellant No.1/4, Appellant No.1/5 and Appellant No.1/6. The Consent Terms are also signed by the Appellant No.1/2 through Constituted Attorney – Vaibhav Naik, Appellant No.1/3. The Consent Terms are signed by Appellant No.1/7 through Constituted Attorney Mr. Nitin S. Naik. Consent Terms are signed by Appellant No.1/8 through Constituted Attorney – Vinay B. Naik. Consent Terms are also signed by Respondent No.1. Consent Terms are signed by the respective Advocates. The respective signatures on the Consent Terms of the parties are identified by their respective Advocates.

4. Appellant No.1/1, Appellant No.1/3, Appellant No.1/4,

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Appellant No.1/5 and Appellant No.1/6 are present in the Court.

Appellant No.1/2, Appellant No.1/7 and Appellant No.1/8 are present through their Constituted Attorneys. Respondent No.1 is present in the Court.

5. All the parties present in the Court state that the Consent Terms are drawn as per the compromise entered into between the Appellants and Respondent No.1. The Consent Terms are taken on record and marked 'X' for identification. The said Consent Terms read as under :-

“CONSENT TERMS

1. By this Consent Terms, the aforesaid Second Appeals filed by the Appellants shall stand disposed off, in terms of these Consent Terms and hereinafter, parties hereto shall not have any claim/s against each other.
2. That Ganpat Kusha Naik, the Original Plaintiff and the predecessor of the Appellants abovenamed, filed Special Civil Suit No. 348/2007 [Old Special Civil Suit No. 19 of 2005] against the Respondents (Org. Defendants) seeking following reliefs in respect of Agricultural land at Village Nilemore, Survey No 202, Area: 0-64-5 + Kharaba 0-42-5. Total Area: 1-07-0, hereinafter referred to as the “suit land”:-
 - (i) That it be declared that the registered Sale Deed dated 17.12.2004, executed by the Respondent No.13 (Org.

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Defendant Nos. 13 as Power of Attorney Holder for Respondent No.2 to 12 (Org. Defendant Nos.2 to 12) in favour of Smt. Sadhana Rajiv Patil (Respondent No.1 /Org. Defendant No.1), is void and deliver it up and cancel its registration;

(ii) That it be declared that the Appellants (Org. Plaintiffs) have the right title as owner and possession of the suit land and that the Respondents have no right, title and interest in the suit land to hold, use and occupy to remain on it;

(iii) restrain the Respondents their respective servants, executors and assigns etc., perpetually from entering upon, remaining on, dealing with, the suit land taking possession of, dispossessing the Appellants (Org. Plaintiffs) from the suit land, selling or otherwise transferring in any way or creating any third party interest in the suit land.

3. That vide Judgment and Decree dated 09.06.2010, the Ld. Civil Judge, Senior Division, Vasai was pleased to partly decree the Special Civil Suit No. 348/2007 by declaring that the Sale Deed executed by the Respondent No.13 (Org. Defendant No.13) in favour of Respondent No.1 (Org. Defendant No.1) is null and void and rejecting the prayer of the Appellants (Org. Plaintiffs) seeking a declaration in respect of Ownership of the suit lands.
4. That being aggrieved by the Judgment and Decree dated

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09.06.2010, the Respondent No.1 initially preferred First Appeal No.853 of 2010 in this Hon'ble High Court, which later on came to be transferred to the District Court, Vasai and renumbered as Regular Civil Appeal No. 15 of 2012. On the other hand the Appellants being aggrieved by the Judgment and Decree dated 09.06.2010 preferred First Appeal No.920 of 2010 in this Hon'ble High Court which later on came to be transferred to the District Court, Vasai and renumbered as Regular Civil Appeal No. 24 of 2013.

5. That vide common Judgment and Order dated 21.02.2018, the Ld. District Judge -1, at Vasai was pleased to allow the Regular Civil Appeal No. 15 of 2012 filed by the Respondent No.1 and dismiss the Regular Civil Appeal No 24 of 2013 filed by the Appellants herein and the Judgment and Decree dated 09.06.2010 passed by the Ld. District Judge-1, Vasai to the extent of granting reliefs in favour of the Appellants (Org. Plaintiffs) and against the Respondent No.1 (Org. Defendant No.1) in Special Civil Suit No. 348 of 2007, was set aside and the Special Civil Suit No. 348 of 2007 filed by the Appellant (Org. Plaintiff) was dismissed.
6. That aggrieved by the said common Judgment & Order dated 21.02.2018, passed the Ld. District Judge -1, at Vasai the Appellants have preferred the aforesaid Second Appeal No. 189 of 2021 and Second Appeal No. 135 of 2021 challenging the dismissal of Regular Civil Appeal No. 24 of 2013 of the

Appellants and allowing the Regular Civil Appeal No. 15 of 2012 filed by the Respondent No.1, respectively.

7. That during the pendency of the aforesaid Second Appeals the Appellants and the Respondent No.1 came together for amicably settling the dispute involved in the aforesaid matter and after negotiations between them have amicably settled the dispute amongst themselves, as follows:-
8. It is agreed and further be ordered and decreed that the registered Sale Deed dated 17.12.2004, executed by the Respondent No.13/Org. Defendant Nos. 13 as Power of Attorney Holder for Respondent No.2 to 12/Org. Defendant Nos.2 to 12 in favour of Respondent No.1 (Org. Defendant No.1), in respect of the suit land is legal, valid and binding upon the Appellants.
9. The Appellants hereby agree and confirm that by virtue of the said registered Sale Deed dated 17.12.2004, the Respondent No.1 has acquired all right, title and interest in the suit land and is legally entitled to retain her sole and exclusive possession in respect of the suit land and the Appellants further agree and confirm that the Appellants either through themselves or their successors, representatives and assignees shall hereinafter not claim any right, title and/or interest of whatsoever nature, in respect of the suit land nor shall raise any dispute in respect of the ownership of Respondent No.1 in respect of the suit land and shall not interfere with and/or obstruct the peaceful, use occupation and possession of the Respondent No.1 in respect of

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the suit land.

10. In lieu of the Appellants agreeing and confirming the right, title and interest of the Respondent No.1 in respect of the suit land by virtue of the said registered Sale Deed dated 17.12.2004 and in lieu of the Appellants having relinquished/released their claim, if any, in respect of the suit land in favour of the Respondent No.1, the Respondent No.1 has paid compensation/consideration to the Appellants, as follows:-

Sr. No.	Name	Amount (Rs.)	Cheque details
(i)	Ramchandra Ganpat Naik Appellant No.1/1	20,00,000/-	Demand Draft No. 951261 dated 17 th January, 2023 drawn on HDFC Bank.
(ii)	Leelabai Gajanan Naik Appellant No.1/2	25,00,000/-	Demand Draft No. 951263 dated 17 th January, 2023 drawn on HDFC Bank.
(iii)	Vaibhav Gajanan Naik Appellant No. 1/3	1,70,00,000/-	Demand Draft No. 951262 dated 17 th January, 2023 drawn on HDFC Bank
(iv)	Vaishali Naik (Vaishali Prashant Patil) Appellant No. 1/4	5,00,000/-	Demand Draft No. 951264 dated 17 th January, 2023 drawn on HDFC Bank
(v)	Shobhana Rajaram Naik Appellant No. 1/5	10,00,000/-	Demand Draft No. 951265 dated 17 th January, 2023 drawn on HDFC Bank
(vi)	Heramb Rajaram Naik Appellant No. 1/6	10,00,000/-	Demand Draft No. 951260 dated 17 th

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			January, 2023 drawn on HDFC Bank
(vii)	Meena Sadanand Naik Appellant No. 1/7	5,00,000/-	Demand Draft No. 951266 dated 17 th January, 2023 drawn on HDFC Bank.
(viii)	Jayashree Bhaskar Naik Appellant No. 1/8	5,00,000/-	Demand Draft No. 951267 dated 17 th January, 2023 drawn on HDFC Bank.

11. The Respondent No.1 hereby undertakes to this Hon'ble Court that all the aforesaid cheques issued in favour of the Appellants will be duly honoured within their respective due dates. The Respondent No.1 further agrees and confirms that if any default is committed by the Respondent No.1 in honoring the aforesaid cheques, then these consent terms shall stand revoked and the aforesaid Second Appeals shall stand restored to file for hearing on merits.

12. The aforesaid Consent Terms have been executed between the Appellants and the Respondent No.1, who are the contesting parties in the aforesaid Second Appeals. Since the execution of the registered Sale Deed Dated 17th December, 2004 by Respondent No.2 to 13 in favor of the Respondent No.1 in respect of the suit land has not been challenged by Respondent Nos.2 to 13 by stepping into the witness box either in the Trial Court or in the Appellate Courts, the said Respondent No. 2 to 13 have not been made parties to these Consent Terms, and

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have been merely added, as formal parties in the aforesaid Second Appeals.

13. The Appellants No.1/2-Leelabai Gajanan Naik is executing this Consent Terms through her Power of Attorney Holder Mr. Vaibhav Gajanan Naik, vide Power of Attorney dated 27th August, 2022. Appellant No.1/7-Meena Sadanand Naik is executing this Consent Terms through her Power of Attorney Holder Mr. Nitin Sadanand Naik, vide Power of Attorney dated 27th August, 2022. Appellant No. 1/8- Jayashree Bhaskar Naik is executing this Consent Terms through her Power of Attorney Holder Mr. Vinay Bhaskar Naik, vide Power of Attorney dated 27th August, 2022. The Appellants hereby confirm that the aforesaid Power of Attorneys (which form part of this Consent Terms) are legally valid and in force.”
6. The undertakings given in the Consent Terms are accepted.
7. Both the Second Appeals are disposed of in terms of the Consent Terms with no order as to costs.
8. In view of disposal of Second Appeals in terms of Consent Terms, nothing survives in the Civil Applications and the same are also disposed of.

[MADHAV J. JAMDAR, J.]