

Pallavi

Digitally signed  
by PALLAVI  
MAHENDRA  
WARGAONKAR  
Date:  
2023.07.03  
18:01:32  
+0530

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

**SECOND APPEAL NO.827 OF 2015  
WITH  
CIVIL APPLICATION NO.1441 OF 2015  
IN  
SECOND APPEAL NO.827 OF 2015**

Smt. Bhagirathi Manikrao Bhise and Ors. ...Appellants

Versus

Shri. Sunil Bhaguji Hingane ...Respondent

- Mr. Sanjeev Sawant i/b. S.C. Wakankar and Aishwarya Bapat, for the Appellants.
- Mr. Ashok Tajane, for the Respondent.
- Smt. Bhagirathi Manikrao Bhise, Appellant No.1 – present.
- Mr. Pradip Manikrao Bhise, Appellant No.2 – present.
- Mrs. Rajashree Manikrao Bhise, Appellant No.3 – present.
- Mr. Sagar Manikrao Bhise, Appellant No.4 – present.
- Mr. Sunil Bhaguji Hingane, Respondent present.

**CORAM : MADHAV J. JAMDAR, J.**

**DATE : 28<sup>th</sup> JUNE 2023**

**P.C. :**

1. Heard Mr. Sanjeev Sawant, learned counsel appearing for the Appellants and Mr. Tajane, learned counsel appearing for the Respondent. Both learned counsel tenders the Consent Terms executed between the Appellants and the Respondent. All the

Pallavi

Appellants viz. Smt. Bhagirathi Manikrao Bhise, Appellant No.1, Mr. Pradip Manikrao Bhise, Appellant No.2, Mrs. Rajashree Manikrao Bhise, Appellant No.3 and Mr. Sagar Manikrao Bhise, Appellant No.4 as well as Respondent – Sunil Bhaguji Hingane are present in Court. The Consent Terms are signed by all the Appellants and the sole Respondent. The Consent Terms are also signed by the respective Advocates. Learned Advocates of the Appellants and the Respondents respectively identifies the signatures of respective parties.

2. To the Consent Terms, a plan is annexed as Annexure-1 as well as Annexure-2. The said Annexure-1 and Annexure-2 are forming part of the Consent Terms. At Annexure-3, collectively, photocopies of Aadhar Cards of all the Appellants are annexed. Said photocopies of Aadhar Cards are signed by the respective Appellants. At Annexure – 4, photocopy of Aadhar Card of sole Respondent is annexed. Said photocopy is also signed by the Respondent.

3. All the Appellants and sole Respondent who are present in Court states that the Consent Terms are arrived at as per the settlement arrived at 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 Appellants are original Plaintiffs whereas the Respondent is original Defendant in Regular Civil Suit No. 1854 of 2006 and the said civil suit was filed by the Appellants in the Court of Civil Judge Senior Division, Pune for permanent injunction in respect of the suit property bearing Final Plot No. 135, area admeasuring 949 Sq. Mtrs. (Survey No. 97/5C & Survey No. 97/34) situated at Industrial Town Planning Scheme No. 2 of village Hadapsar, City Survey Officer No. 2, District Pune.
- 2) By judgment, order & decree dated 29/11/2012, the Ld. 4<sup>th</sup> Jt. Civil Judge Junior Division, Pune dismissed the said civil suit of the Appellants.
- 3) The Appellants filed Regular Civil Appeal No. 1185 of 2012 in the Court of District Judge, Pune challenging the judgment, order and decree dated 29/11/2012 passed by the Ld. Judge of the Trial Court in Regular Civil Suit No. 1854 of 2006.
- 4) By judgment and order dated 30/04/2015, Ld. Adhoc District Judge-3, Pune dismissed the Regular Civil Appeal No. 1185 of 2012 and confirmed the judgment and decree dated 29/11/2012 passed by the Ld. Trial Court in Regular Civil Suit No. 1854 of 2006.
- 5) Being aggrieved by the said judgment and order, the

Pallavi

Appellants have filed present Second Appeal. That the Second Appeal was listed before Hon'ble High Court of Judicature at Bombay and by order dated 23/11/2022, the Hon'ble High Court was pleased to admit the present Second Appeal.

6) That the Appellants (original Plaintiffs) and the Respondent (original Defendant) have amicably settled the dispute out of the Court on following terms & conditions :-

A) It is confirmed by the Appellants and the Respondent herein that the suit property bearing Final Plot No. 135 situated at Industrial Town Planning Scheme No. 2 of village Hadapsar under City Survey Officer No. 2, District Pune is having total area admeasuring 949 Sq. Mtrs. i.e. 10214.95 Sq. Fts. and is bounded as follows :-

On or towards East :- By Final Plot No. 136,

On or towards South :- By boundary (shiv) of village Mohammadwadi,

On or towards West :- By Final Plot No. 134,

On or towards North :- By Road.

B) It is admitted by the Appellants and the Respondent herein that as on today, the name of the Respondent herein is recorded in the ownership column of the city survey extract of the said suit property as 'Holder/Occupant' thereof. It is further admitted that in the western side portion of the said suit property, the Respondent herein has

Pallavi

constructed one tin-shed and has dug one bore-well at his own costs and the Respondent has also got installed electricity meter (Consumer No. 170567007840) in his name from the Maharashtra State Electricity Distributors Co. Ltd. in the year 2015. It is further admitted that the name of the Respondent herein is also recorded in the Tax Assessment Extract in Pune Municipal Corporation in the year 2006-07 and the Property ID Number of the said suit property is P/1/20/01346000.

C) It is hereby agreed and decided by the Appellants and the Respondent herein that the **eastern side portion admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts.** out of total area of the suit property shall be owned and possessed by the Appellants herein as owners thereof whereas the **western side remaining portion of the suit property admeasuring 531 sq. mtrs. i.e. 5715.64 sq. fts.** shall be owned and possessed by the Respondent herein as owner thereof.

D) The Appellants and the Respondent declare and confirm that they have jointly carried out demarcation and measurement of the **eastern side portion admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts.** as well as **western side remaining portion of the suit property admeasuring 531 sq. mtrs. i.e. 5715.64 sq. fts.** out of total area of the suit property through Government approved private Surveyor

Pallavi

and the expenses whereof have been borne by the Appellants and the Measurement Report showing the location and boundaries of **eastern side portion admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts.** as well as **western side remaining portion of the suit property admeasuring 531 sq. mtrs. i.e. 5715.64 sq. fts.** out of total area of the suit property is annexed hereto and marked as **Annexure “1”**.

E) The Respondent has delivered quiet, vacant, peaceful and actual possession of the eastern side portion area admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts. out of total area of the suit property to the Appellants as owners thereof as demarcated and shown in the Measurement Report annexed at *Annexure 1* to the present Consent Terms.

F) The Appellants shall get executed and the Respondent undertakes to execute necessary deed/document in the nature of a Deed of Transfer or a Deed of Exchange or other suitable writing in respect of the eastern side portion area admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts. out of total area of the suit property as mentioned above in the name of the Appellants herein without any consideration and by way of settlement as undertaken in the present Consent Terms. Provided that all the expenses including stamp duty, registration charges and other miscellaneous

Pallavi

expenses for execution and registration of such deed/document shall be borne by the Appellants.

G) The Appellants shall get their names recorded in the city survey extract as well as in record of rights/assessment extract of the suit property in Pune Municipal Corporation as owner & possessor at their own costs to the extent of area admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts. out of total area of the suit property and the Respondent will have no objection for the same. Further, the Respondent undertakes to give full co-operation to enter the names of the Appellants in the city survey extract as well as in record of rights/assessment extract of the suit property in Pune Municipal Corporation to the extent of area admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts.

H) The rough sketch showing the area owned and possessed by the Appellants and the Respondent herein is annexed herewith and marked as **Annexure “2”**. The Appellants shall be entitled to use & occupy the eastern side area admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts. out of total area of the suit property as owners thereof whereas the Respondent shall be entitled to use & occupy the western side remaining portion of the suit property area admeasuring 531 sq. mtrs. i.e. 5715.64 sq. fts. as owner thereof.

I) The Appellants shall be entitled to enjoy the eastern

Pallavi

side portion area admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts. out of the total area of the suit property as mentioned above without any hitch, hindrance, obstruction or disturbance of any nature whatsoever from the Respondent and shall be further entitled to deal with and/or develop the same as per their choice and the Respondent undertakes not to take any objection of any nature for the said development being done by the Appellants in their property as mentioned in the present Consent Terms.

J) The Respondent shall be entitled to enjoy the western side remaining portion of the suit property area admeasuring 531 sq. mtrs. i.e. 5715.64 sq. fts. out of the total area of the suit property as mentioned above without any hitch, hindrance, obstruction or disturbance of any nature whatsoever from the Appellants and shall be further entitled to deal with and/or further entitled to develop the same as per his choice and the Appellants undertake not to take any objection of any nature for the said development being done by the Respondent in his property as mentioned in the present Consent Terms.

K) The Respondent do hereby declare and confirm the possession of the Appellants in the eastern side area admeasuring 418 sq. mtrs. i.e. 4499.31 sq. fts. out of total area of the suit property as owners thereof whereas the

Pallavi

Appellants do hereby declare and confirm the possession of the Respondent in the western side portion area admeasuring 531 sq. mtrs. i.e. 5715.64 sq. fts. out of total area of the suit property as owner thereof.

L) Judgment and decree be passed in above terms with no order as to costs.

7) The parties further undertake to do and execute all such acts, deeds, things, etc. as may be necessary for giving full effect to the present Consent Terms. The photocopies of Aadhar card of the Appellants is annexed as 'Annexure 3' and copy of Aadhar card of Respondent is annexed as 'Annexure 4'. The parties have put their signatures on the copies.

8) It is further agreed and confirmed by the parties hereto that the present Consent Terms shall be binding upon the Appellants and Respondent herein and their respective heirs, legal representatives, agents, executors, assigns, etc. and any person(s) claiming through or under them in any manner whatsoever.

Mumbai

Dated :- 28/06/2023”

4. In view of the Consent Terms arrived between the parties, the Judgment and Decree dated 29<sup>th</sup> November 2012 passed by the learned 4<sup>th</sup> Jt. Civil Judge, J.D., Pune in Reg. Civil Suit No.1854 of

Pallavi

2006 as well as the Judgment and Decree dated 30<sup>th</sup> April 2015 passed by the learned Ad-hoc District Judge-3, Pune in Civil Appeal No.1185 of 2012 is quashed and set aside and the said Reg. Civil Suit No.1854 of 2006 is decreed in terms of the Consent Terms.

5. The Appellants and the sole Respondent who are present in Court gives undertaking to this Court to comply with various terms and conditions of the Consent Terms. The undertakings given in the Consent Terms and the undertaking given personally by the Appellant and the sole Respondent to this Court are accepted.

6. Accordingly, Second Appeal is disposed of in above terms and in terms of the Consent Terms with no order as to costs.

7. In view of disposal of the Second Appeal, nothing survives in the Civil Application and the same is disposed of.

**[MADHAV J. JAMDAR, J.]**