

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

**SECOND APPEAL NO. 622 OF 2023
WITH
SECOND APPEAL NO. 623 OF 2023**

Nandini K. Shinde (since deceased
through legal heirs) :
Kailas Bapuji Shinde (since deceased
through legal heirs) :

Niranjan Kailas Shinde and ors.

.... Appellants

v/s.

Genu Babu Gaikar (since deceased
through legal heirs) :

Somnath Genu Gaikar and ors.

.... Respondents

Mr. Satyajeet P. Dighe for the Appellants.

Mr. Abhijeet Khade for Respondent Nos.2, 4 and 5.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 03rd NOVEMBER, 2023.

P. C. :-

. The predecessor of the Appellants was the original Plaintiff and the Respondents were the Defendants in Regular Civil Suit No.1183/2012 and Regular Civil Suit No.464/1997. The Appellants had entered into an agreement for sale dated 02/09/1983 with Respondent Nos.1 to 5 in respect of the property described in the plaint as suit land 'A' admeasuring 2H 41 R and another agreement dated 02/01/1986 in respect of the property described in the plaint as

suit land 'B' admeasuring 10R situated at Naikwadi, Dist. Nashik. The Appellants filed two different suits for specific performance of these two agreements i.e. Regular Civil Suit Nos.1183/2012 and Regular Civil Suit No.717/1998.

2. It is stated that during the pendency of the suit, the Respondent Nos.1 to 5 sold the property admeasuring 10R described as suit land 'B', which was the subject matter of the 2nd agreement dated 02/01/1986 to Respondent Nos.6, 7 and 8. These subsequent purchasers came to be impleaded in Regular Civil Suit No.717/1998. The Appellants filed another suit being Regular Civil Suit No.464/1997 against all the Respondents seeking declaration that they are in possession of the property which was the subject matter of the sale agreement dated 02/01/1986. All the three suits were decreed by judgment and decree dated 06/05/2013. Being aggrieved by the judgment and decree, the Respondent Nos.1 to 5 filed three separate appeals before the District Judge, Nashik.

3. The learned District Judge by judgment and order dated 28/04/2023 allowed the said appeals and set-aside the decree and consequently dismissed all the three suits viz. Regular Civil Suit

Nos.1183/2012, 464/1997, 717/1998 filed by the Appellants. Being aggrieved by the dismissal of Regular Civil Suit Nos.464/1997 and 1183/2012, the Appellants have filed these Appeals under section 100 of the Code of Civil Procedure. The Appellants have not challenged the judgment and decree in Regular Civil Appeal No.267/2013 arising out of Regular Civil Suit No.717/1998.

4. During the pendency of these Appeals, the Appellants and the Respondent Nos.1 to 5 have entered into settlement. The Appellants have sought leave to delete the names of Respondent Nos.6, 7 and 8 who are the subsequent purchasers of the property described as suit land 'B' admeasuring 10R. It is stated that the consent terms do not affect the rights of the Respondent Nos.6, 7 and 8.

5. In view of the said statement, learned counsel for the Appellants seeks leave to delete the names of Respondent Nos.6, 7 and 8 in Second Appeal No.622/2023 and to delete the names of Respondent Nos.6 and 7 in Second Appeal No.623/2023. Leave granted. Names of these Respondents be deleted. Cause title be amended forthwith.

6. Learned counsel for the Appellants and the Respondents have

placed on record the consent terms in both the Appeals signed by Appellant No.1(b) and 1(d) and by Respondent Nos.2, 4 and 5, which read thus :-

CONSENT TERMS IN SECOND APPEAL NO. 622 OF 2023 :-

“ 2. At the outset it is requested that Appellants be permitted to delete Respondent Nos. 6,7 and 8 at the risk of the undersigned consenting parties. Since the present consent terms do not affect the rights of Respondent No. 6, 7 and 8 in any manner as well as the present consent terms do not relates to the property belonging to Respondent No. 6 7 and 8 (i.e. area admeasuring 10R in suit Gat No. 52), it is mutually agreed to delete the Respondent No. 6 7 and 8 from the array of parties in the captioned Second Appeal.

3. It is agreed between the parties that the Judgment and decree dated 06/05/2013 passed by the Ld. 7th C.J.J.D., Nashik in R.C.S. No. 464 of 1997 is quashed and set aside, excluding area admeasuring 10R in Land Gat no. 52 belonging to Bhalerao family.

4. It is also agreed by the consenting parties that Judgment and decree dated 28/04/2023 passed by the Ld. District Judge-4, Nashik in Regular Civil Appeal No. 268 of 2013 is hereby quashed and set aside.

5. It is agreed that Respondents shall transfer land bearing Gat No. 52 in favour of Appellant to the extent of area admeasuring 5 Acres. The remaining area of the said land will remain with the Respondents. The Respondents shall execute registered sale deed in favour of the Appellants for the aforesaid area of 5 acres by obtaining necessary permissions.

6. It is agreed that Respondents have already received sum of Rs.

1,05,216/- and hence Respondents shall not claim any further amount from the Appellants here after neither Respondents will raise any dispute regarding receipt of the aforesaid amount.

7. In addition to the present consent terms, the undersigned consenting parties will also abide by the MOU dated 13/06/2023 annexed herewith as Annexure-1.

8. The parties agree that they will undertake to abide by the present consent minutes of order and shall not raise any dispute against each other hereinafter. So also it is agreed that if at all any controversy arises from third parties, the consenting parties shall support each other in furtherance of the present consent terms respectively. ”

CONSENT TERMS IN SECOND APPEAL NO. 623 OF 2023 :-

“ 2. At the outset it is requested that Appellants be permitted to delete Respondent Nos. 6 and 7 at the risk of the undersigned consenting parties. Since the present consent terms do not affect the rights of Respondent No. 6 in any manner as well as the present consent terms do not relates to the property belonging to Respondent No. 6 (i.e. area admeasuring 10R in suit Gat No. 52), it is mutually agreed to delete the Respondent No. 6 from the array of parties in the captioned Second Appeal. The Respondent no.7 is deceased.

3. It is agreed between the parties that the Judgment and decree dated 06/05/2013 passed by the Ld. 7th C.J.J.D., Nashik in Special Civil Suit No. 627 of 1998 (New R.C.S. No. 1183 of 2012) is quashed and set aside.

4. It is also agreed by the consenting parties that Judgment and decree dated 28/04/2023 passed by the Ld. District Judge-4, Nashik in

Regular Civil Appeal No. 266 of 2013 is hereby quashed and set aside.

5. It is agreed that Respondents shall transfer land bearing Gat No. 52 in favour of Appellant to the extent of area admeasuring 5 Acres. The remaining area of the said land will remain with the Respondents. The Respondents shall execute registered sale deed in favour of the Appellants for the aforesaid area of 5 acres by obtaining necessary permissions.

6. It is agreed that Respondents have already received sum of Rs. 1,05,216/- and hence Respondents shall not claim any further amount from the Appellants here after neither Respondents will raise any dispute regarding receipt of the aforesaid amount.

7. In addition to the present consent terms, the undersigned consenting parties will also abide by the MOU dated 13/06/2023 annexed herewith as Annexure-1.

8. The parties agree that they will undertake to abide by the present consent minutes of order and shall not raise any dispute against each other hereinafter. So also it is agreed that if at all any controversy arises from third parties, the consenting parties shall support each other in furtherance of the present consent terms respectively. ”

7. The Appellant No.1(b) and 1(d) and Respondent Nos.2, 4 and 5 are present before the Court and they are identified by their respective counsel. These Appellants have identified their signature and have confirmed the contents of the consent terms. I am satisfied that the Consent Terms are filed by the parties as per their own willingness and

on their own volition. The Consent Terms are acceptable to the parties and hence, are taken on record and marked as 'X' for identification. Both the Appeals stand disposed of as per the Consent Terms filed by the parties. Decree be drawn accordingly. Consent Terms shall form part of the decree.

PREETI
HEERO
JAYANI

Digitally signed
by PREETI
HEERO JAYANI
Date: 2023.11.07
18:04:39 +0530

(SMT. ANUJA PRABHUDESSAI, J.)