



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO.20 OF 2023

1. Imtiyaz Khan s/o Mahmood Khan,
Age 22 years, Occupation: Student,
resident of Mill Gate, Nanded.
2. Sultana Begum w/o Sameer Khan,
age 30 Years occupation Household,
resident of Hadgaon, Taluka Hadgaon,
Dist. Nanded.
3. Taranum Begum w/o Malik,
age 23 Years occupation Household.
resident of Itwara Nanded.
4. Yasmeen Begum d/o Mahmood Khan,
age 18 Years occupation Household
resident of Mill Gate Nanded.
5. Akram Khan s/o Mahmood Khan,
age 20 Years occupation business.
resident of Millgate, Nanded.
6. Seema Khan w/o Mirza Ahmed,
age 27 Years occupation Household
resident of Sameera Bagh, Nanded.

Versus

1. Kishanrao s/o Gunwantrao Pawde.
DIED THROUGH LEGAL HEIRS.
- 1/1 Dilip s/o Kishanrao Pawde.
age 56 Years occupation agriculture,
- 1/2 Ramesh s/o Kishanrao Pawde
age 47 Years occupation agriculture.
- 1/3 Balaji s/o Kishanrao Pawde
age 42 Years occupation agriculture.

All resident of Wamanrao Pawde Mangal
Karyalaya, Purna road, Nanded.

2. Gyanoba s/o Suryabhan Pawde,
DIED THROUGH LEGAL HEIRS

2/1 Rajeshwarrao s/o Bhaurao Pawade
Age 62 years, Occ. Agri,
R/o. Wadi (Bk), Tq. & Dist. Nanded.

3. Sayed Shadullah s/o Syed Pasha,
age 60 years occupation business,
resident of Nai-abadi Nanded,
Taluka District Nanded (Formal Respondent)

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Mrs. A. N. Ansari, Advocate for the Applicants.

Mr. V. S. Kadam, Advocate for Respondent Nos.1/1 to 1/3.

Mr. Rehan Khan h/f Mr. G. R. Syed, Advocate for Respondent No.3.
Respondent No.2/1 is served.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED 02nd DECEMBER, 2024.

ORDER:-

1. The appellants who are legal representatives of Mohammad Khan s/o Mahmood Khan, approached this Court impugning order dated 15.10.2001 passed by 2nd Additional District Judge, Nanded in Miscellaneous Application (RJE) No.53/1999, which was filed by Mahmood Khan.

2. The respondent no.1 had instituted Regular Civil Suit No.179/1988 seeking relief of specific performance of contract, declaration and recovery of possession in respect of land Survey No.218 admeasuring 2 acres 16 gunthas situated at Wadi (Bk.) on the strength of agreement to sale dated 23.11.1970 against defendants namely Syed Sadulla, Gyanoba Pawde and Mehmood Khan, contending that Pashamiya and Rahimbee had executed

agreement to sale in presence of attesting witnesses. The earnest amount of Rs.1000/- was paid to Rahimbee. The said contract was contingent upon outcome of certain litigation. The Trial Court decreed the suit and directed defendant nos.1 and 3 i.e. Syed Sadulla and Mehmood Khan to execute sale deed of suit property Survey No.218 in favour of plaintiff by accepting remaining consideration. The sale deed executed by Syed Sadulla in favour of Mehmood Khan in respect of suit property was declared as null and void and ineffective against the interest of the plaintiff.

3. The decree passed in Regular Civil Suit No.179/1988 was assailed by Mehmood Khan and Syed Sadulla in Regular Civil Appeal No.301/1992. During pendency of Appeal, respondent no.2- Gyanoba Pawade/Chairman of Bhajni Mandal Wadi (Bk.) died in the year 1995. However, no steps were taken to bring on record the names of proper authority representing respondent no.2-Trust. Consequently, vide order dated 07.04.1999, District Judge, Nanded dismissed Regular Civil Appeal No.301/1992 as abated in whole.

4. The Mehmood Khan and Syed Sadulla filed Miscellaneous Application (RJE) No.53/1999 for setting aside order of abatement of Appeal dated 07.04.1999. The learned IInd Additional District Judge, Nanded dismissed the said application vide order dated 15.10.2001. The said order is assailed after 23 years in this Appeal from Order filed in January 2023.

5. Mrs. Ansari, learned Advocate appearing for the appellants submits that appellants were either minor or of tender age, when impugned order is passed. Their father Mahmood Khan died in the year 2009. The appellants were not aware about the impugned order. When they received notice of execution of decree, they came to know about aforesaid proceeding. Therefore, delay is occasioned in filing present Appeal.

6. Apparently, Mahmood Khan was father of the appellants. He was prosecuting Regular Civil Appeal No.301/1992 before the District Judge at Nanded. During pendency of said appeal, respondent no.2-Gyanoba Pawde, who was Chairman of Bhajni Mandal Wadi (Bk.) expired in the year 1995. Consequently, Appeal was abated as whole vide order dated 07.04.1999. The father of the appellants Mahmood Khan had moved Miscellaneous Application (RJE) No.53/1999 for restoration of appeal. After hearing submissions of respective parties, said application came to be dismissed on 15.10.2001.

7. Pertinently, Mahmood Khan was alive till 2009. During his lifetime, he did not challenge order dated 15.10.2001. Nothing is brought on record to show that Mahmood Khan was prevented to take steps during lifetime. Now the appellants, who are legal heirs of deceased Mahmood Khan seeks to challenge order after 23 years. The only reason sought to be given is that appellants were not

aware about order impugned. In view of the admitted position that Mahmood Khan was alive till 2009 and during his lifetime he did not thought it necessary to challenge order dated 15.10.2001, the plaintiffs, who were of tender age at relevant time or even not born cannot be allowed to reopen order that has attained finality.

8. Consequently, there is no merit in the present Appeal from Order and the same stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/December-2024