



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.305 OF 2020

1. Bhanudas Narayan Kolhe (Dead),
2. Maruti Bhanudas Kolhe. ...Appellants

Versus

1. Karbhari Narayan Kolhe,
2. Sitaram Dagdu Kolhe (Dead),
- 2A. Madhav Sitaram Kolhe,
- 2B. Karbhari Sitaram Kolhe,
- 2C. Chandrabhaga Sitaram Kolhe,
- 2D. Hausabai Tabaji Gunjal,
- 2E. Lahanbai Yadav Rahane,
- 2F. Sumanbai Badshaha Bhagwat,
- 2G. Kamal Annasaheb Dushing,
- 2H. Kaushabai Somnath Kale,
- 2I. Shobha Santosh Chaudhari,
3. Sambhaji Kondaji Kolhe (Dead),
- 3A. Ravindra Sambhaji Kolhe,
- 3B. Dilip Sambhaji Kolhe,
- 3C. Savita Chandrabhan Mande,
- 3D. Ujawala Rajendra Karpe,
- 3E. Anita Raghunth Rakshe,
- 3F. Kavita Dipak Ghodake,

4. Ashok Kondaji Kolhe,
5. Yashodabai Kondaji Kolhe,
- 5A. Gangadhar Kondaji Kolhe,
- 5B. Sitaram Kondaji Kolhe,
- 5C. Vasant Kondaji Kolhe,
- 5D. Bhikubai Kondaji Kolhe,
- 5E. Chahabai Babuao Gopale,
- 5F. Babai Sakharam Wale,
- 5G. Hirabai Dattatraya Argade,
6. Sitabai Baburao Mutkule,
7. Somnath Baburao Torkadi,
8. Rameshwar Lift Irrigation Sanstha,
9. Mankeshwar Sahakari Pani Purvatha,
10. Nanasaheb Raghunath Gadekar,
11. Sharadkumar Karbhari Kolhe. ...Respondents

**WITH
CIVIL APPLICATION NO.4849 OF 2024
IN
SECOND APPEAL NO.305 OF 2020**

1. Bhagirthibai Murlidhar Gorde. ...Applicant

Versus

1. Karbhari Narayan Kolhe,
2. Sitaram Dagdu Kolhe (Dead),
- 2A. Madhav Sitaram Kolhe,

- 2B. Karbhari Sitaram Kolhe,
- 2C. Chandrabhaga Sitaram Kolhe,
- 2D. Hausabai Tabaji Gunjal,
- 2E. Lahanbai Yadav Rahane,
- 2F. Sumanbai Badshaha Bhagwat,
- 2G. Kamal Annasaheb Dushing,
- 2H. Kaushabai Somnath Kale,
- 2I. Shobha Santosh Chaudhari,
- 3. Sambhaji Kondaji Kolhe (Dead),
- 3A. Ravindra Sambhaji Kolhe,
- 3B. Dilip Sambhaji Kolhe,
- 3C. Savita Chandrabhan Mande,
- 3D. Ujawala Rajendra Karpe,
- 3E. Anita Raghunth Rakshe,
- 3F. Kavita Dipak Ghodake,
- 4. Ashok Kondaji Kolhe,
- 5. Yashodabai Kondaji Kolhe,
- 5A. Gangadhar Kondaji Kolhe,
- 5B. Sitaram Kondaji Kolhe,
- 5C. Vasant Kondaji Kolhe,
- 5D. Bhikubai Kondaji Kolhe,
- 5E. Chahabai Babuaopale,
- 5F. Babai Sakhararam Wale,

- 5G. Hirabai Dattatraya Argade,
 6. Sitabai Baburao Mutkule,
 7. Somnath Baburao Torkadi,
 8. Rameshwar Lift Irrigation Sanstha,
 9. Mankeshwar Sahakari Pani Purvatha,
 10. Nanasaheb Raghunath Gadekar,
 11. Sharadkumar Karbhari Kolhe,
 12. Bhanudas Narayan Kolhe (Dead),
 13. Maruti Bhanudas Kolhe. ...Respondents
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Adv. S. T. Shelke h/f. Adv. Shrinivas S. Wagh for the Appellants in SA/305/2020.

Adv. Tanishqa P. Shirsath for the Applicant in CA/4849/2024.

Adv. Umar Sayed h/f. Adv. K. N. Shermale for Respondent No.1. (through AGP Holder of R/11).

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 25th NOVEMBER 2024.

JUDGMENT:-

1. The Appellants have filed this second appeal aggrieved by the judgment and decree dated 27th December 2018 passed by learned Ad-hoc District Judge-2, Sangamner in Regular Civil Appeal No.15 of 2016, thereby partly modifying judgment and decree dated 23rd December 2005 passed by learned 2nd Joint Civil Judge Junior Division at Sangamner in Regular Civil Appeal No.588 of 2000.

2. The parties are referred as per their original status in the suit for the purpose of brevity. The Plaintiffs filed Regular Civil Suit No.588 of 2000 seeking the relief of declaration, injunction and recovery of Rs.3,000/- against the Defendants contending that suit properties, i.e., Survey Nos.281, 200/3 and 200/2 and common well with electric motor situated at Survey No.217/1B+2B is belonging to Plaintiffs and Defendant No.1. The Suit properties also include house properties open land situated at Dhandarphal, Taluka Sangamner, District Ahmednagar.

3. The Trial Court dismissed the suit vide judgment and decree dated 23rd December 2005. However, in appeal filed by Plaintiffs, the decree has been modified to the extent of suit Well situated at Survey No.217/1B+2B, thereby granting 1/6th share each to Plaintiff No.2 and Defendant No.1. The 1/3rd share has been granted jointly to Defendant Nos.2A to 2I and 1/3rd share jointly has been granted to Defendant Nos.3A to 3F, Defendant No.4 and Defendant No.5A to 5G. Further declaration is granted that Plaintiff Nos.2 and Defendant No.1 have ½ share each in electric motor of 5 HP installed on suit-well. The Defendant No.1 is perpetually restrained from interfering with the joint possession of Plaintiff No.2 over the suit-well and the electric motor until partition is effected by made and bounds. The partition in pursuance of aforesaid declaration has been directed to be effected by

appointing the Court Commissioner. The rest of claim of Plaintiffs has been rejected. The aforesaid decree of the Appellate Court is subject matter of the present second appeal.

4. Apparently, as per Appellate Court's decree, shares have been allotted to parties referred above only in respect of Survey Nos.217/1B+2B particularly as regards to suit-well.

5. At this stage, the Appellants have filed a compromise pursis stating that the partition dispute between the Appellants and Respondent Nos.1 and 11 has been settled. Appellants have no claims or grievance against Respondent No.2 (2A to 2I), 3 (3A to 3F), 4, 5 (5A to 5G) and 6 to 10. The Appellants have accordingly filed pursis to delete Respondent Nos.2 (2A-2I), 3(3A-3F), 4, 5 (5A-5G) and 6 to 10 from the array of the Respondents. The pursis dated 30th September 2004 is taken on record and marked as Exhibit-X1 for identification.

6. On 30th September 2024, the second appeal was taken on board on the request of the Appellants. The submission was made that the Appellants as well as Respondent Nos.1 and 11 have arrived at amicable settlement hence they have filed Consent Terms on record. The Consent Terms are already taken on record and marked as "X" for identification and statement has been made that in pursuance of the

pursis Exhibit-X1, Appellants wants to withdraw the appeal against rest of the Respondents.

7. Accordingly, the Registrar (Judicial) of this Court was directed to verify the contents of Consent Terms and also report the Court, if the aforesaid compromise terms affect the right of other Respondents. The Vakalatnama on behalf of Respondent Nos.1 and 11 was taken on record along with pursis for withdrawal of appeal against remaining Respondents.

8. On 1st October 2024, the learned Registrar (Judicial) submitted his report dated 30th September 2024 along with compromise pursis, which is marked as Exhibit-X. The learned Registrar (Judicial) observed that the rights of other parties in the other properties which are stated to be ancestral properties will have to be taken into consideration. In view of such observations, it would be better to obtain consent of other parties for accepting present Consent Terms and passing the decree to that effect. Accordingly, the learned Advocate for the Appellants was directed to make his further submissions. Thereafter, matter was adjourned to 26th October 2024.

9. Mr. S. T. Shelke, learned Advocate appearing for the Appellants and Mr. K. N. Shermale, learned Advocate for Respondent No.1 advanced their submissions. Mr. Shelke filed one more Pursis

marked as Exhibit X-2 for identification, indicating that Respondent No.1- Karbhari S/o. Narayan Kolhe died on 20th November 2024. Leaving behind Respondent No.11-Sharadkumar Karbhari Kolhe as his legal heir. The Appellants are permitted to carry amendment in title clause of the appeal memo to that effect.

10. Having considered submissions, it can be observed that the substantive suit filed by the Appellants seeking decree of partition against the Defendants was dismissed by the Trial Court. However, the Appellate Court approved the right of the Plaintiffs along with Defendant Nos.1, 2A to 2I, 3A to 3F, Defendant No.4 and Defendant Nos.5A to 5G in respect of the suit-well situated in Survey No.217/1B+2B at village Dhandharphal, Budruk, Taluka Sangamner. Rest of the claim of the Plaintiffs was dismissed and the decree passed by the Trial Court has been modified to that extent. Apparently, none of Defendant has been aggrieved by the judgment and decree as passed by Trial Court or modified by the Appellate Court. They accepted verdict as it is.

11. Now the Plaintiffs/Appellants arrived at compromise with Defendant Nos.1 and 11 in respect of rights approved by Appellate Court as per decree dated 27th December 2018, in terms of the settlement. The compromise would sub-serve decree passed by the Appellate Court and shall be binding only on Plaintiffs and Defendant

Nos.1 and 11. The compromise terms are duly signed by the Appellants and Respondent No.11 for himself and for Respondent No.1, i.e., Karbhari Narayan Kolhe being sole legal representative and on the basis of general power-of-attorney holder. The terms are duly verified before the Registrar of this Court, the report of verification indicates that the parties have duly verified compromise terms and put up their signatures.

12. In light of the aforesaid facts, following order is passed:-

- (i) Second Appeal No.305 of 2020 is partly allowed.
- (ii) The decree passed by First Appellate Court in R.C.A. No.15 of 2016 is modified in terms of compromise pursis filed on record of this Court at Exhibit 'X' without prejudice to the rights of other Defendants.
- (iii) The second appeal stands dismissed as withdrawn as against Respondent No.2 (2A to 2I), 3, (3A to 3F), 4, 5 (5A to 5G) and 6 to 10. Their rights shall be governed by the judgment and decreed dated 27th December 2018 passed by the First Appellate Court in R.C.A. No.15 of 2016.
- (iv) Second appeal stands disposed of in the aforesaid terms.
Decree be drawn accordingly.

- (v) In view of disposal of second appeal, civil application does not survive and it is also disposed of.

(S. G. CHAPALGAONKAR, J.)