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913 sa 4.23

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

913 SECOND APPEAL NO. 4 OF 2023

**VASANT HIRALAL GUJARATHI DIED
LRS. SHYAM VASANTLAL GUJARATHI AND ANOTHER
VERSUS
MADANLAL HIRALAL GUJARATHI AND ORS.**

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Advocate for Appellant : Mr. S.A. Kulkarni
Advocate for Respondents : Mr. Mangesh G. Patil
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**CORAM : Y.G. KHOBRAGADE, J.
DATE : 25.04.2024**

PC.:-

1. The appellant nos.1 and 2/original plaintiff nos.2 and 3 as well as the respondent no.5/original defendant no.5, respondent no.8/original plaintiff no.1 have filed joint pursis along with settlement deed/agreement executed on 25.04.2024 and stated that have they amicably settled the dispute in terms of compromise deed. The said compromise deed is notarized before the Public Notary advocate Sheshnarayan D. Kunte on 24.04.2024 vide sr.no.381/2024. It bears signature of original defendant no.3-Sanjay Madanlal Gujrathi, original defendant no.5-Rama Madanlal Gujrathi, original plaintiff no.1 Smt. Gita Vasantlal Gujrathi, original plaintiff no.1-Shyam Vasantlal Gujrathi and original plaintiff no.3-Shama Rajmohan Shah. The appellant nos.1 and 2 in the second appeal are son and daughter of respondent no.2 /

original plaintiff no.1.

2. It is submitted that the plaintiffs filed RCS No.153/2000 (old Special Civil Suit No.80/1996 and Old Civil Suit no.278/1995) for ownership and perpetual injunction against the defendants. The defendants filed their written statement and resisted claim of the plaintiffs. The defendant nos.1 to 5 set out their counter claim. After conclusion of trial, the suit of the plaintiffs came to be dismissed, however, counter claim of the original defendant nos.1 to 5 was allowed by judgment and decree dated 23.01.2013.

3. Being aggrieved by said judgment and decree the original plaintiffs filed RCA No.12/2013 before the First Appellate Court. During pendency of the appeal, the defendant no.2 – Sou. Prabhawati Madanlal Gujrathi died on 08.11.2022, the defendant no.4 – Rajshri Narendrakumar Suttarwala died on 14.11.2006 prior to passing of the judgment and decree by the Trial Court. Accordingly, names of original defendant nos.2 and 4 are deleted from the array of respondents before the First Appellate Court. On 28.09.2022, the learned First Appellate Court passed the impugned judgment and decree and dismissed the appeal confirming the judgment and decree passed by the learned Trial Court, hence, this appeal under Section 100 of the C.P.C. During the pendency of the present appeal the original defendant no.1- Madanlal Hiralal Gujrathi died on 13.02.2023.

4. Since the counter claim of original-defendant nos.1 to 5 has been allowed, as such, the original defendants and the original plaintiffs entered into a agreement of settlement as per terms and conditions of deed of settlement. The said pursis and deed of settlement are taken on record and marked as Exh.X and Exh.X-1 for identification.

5. Since the parties to the appeal have amicably settled their dispute out of Court as per the terms and conditions of settlement at Exh- 'X' and Exh- 'X-1', therefore, it would be just and proper to dispose off the present appeal in pursuance of the amicable settlement. Accordingly, I proceed to pass the following order:

ORDER:

- I) The appeal is disposed off in terms of settlement deed at Exh-'X' and 'X-1' which is part and parcel of the decree.
- II) Accordingly, the decree be drawn.
- III) Parties to bear their own costs.

[Y.G. KHOBRADE, J.]