

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.6505 OF 2024
IN
SECOND APPEAL NO.255 OF 2019

Sanjay Bhau Mane ...Applicant

IN THE MATTER BETWEEN:

Maruti Dikappa Kurne ...Appellant

Versus

Sanjay Bhau Mane & Ors. ...Respondents

Mr. Rahul R. Tiwari, for the Applicant in IA/6505/2024.

Mr. Manoj A. Patil, for the Appellant in SA/255/2019.

CORAM: MADHAV J. JAMDAR, J.
DATED: 05 DECEMBER 2024

P.C.:

1. The Interim Application has been filed seeking relief that the Order dated 4th July 2023 passed by this Court in Second Appeal No.255 of 2019 along with Civil Application No.281 of 2018 be recalled. The said Order reads as under:-

“1. The Second Appeal No.255 of 2019 is admitted by order dated 3rd October 2018. Civil Application No.1298 of 2019 was filed for expediting the hearing of the Second Appeal and a learned Single Judge by order dated 4th November 2019 expedited the hearing of the Second Appeal

and the Appeal was directed to come up for hearing on 28th November 2019. Thereafter, on 28th November 2019, the matter was adjourned by the learned Single Judge due to paucity of time. On 24th August 2022, a learned Single Judge kept the matter on 21st September 2022 under the caption for Directions. Thereafter, again Interim Application No.16992 of 2022 has been taken up for expediting the hearing of the matter for the reason that the Respondent No.1 is serving in Army and he is going to retire in the near future. Accordingly, Second Appeal was kept on 17th November 2022 for final hearing.

2. On 9th December 2022 when the said Second Appeal was taken up for final hearing, a request was made by the learned Advocate Mr. Ashish Pawar on behalf of the Appellant to adjourn the matter as Mr. Manoj Patil, learned Advocate appearing for the Appellant was in personal difficulty. Therefore, this Court kept the matter on 6th January 2023 high on board.

3. Again on 6th January 2023, Mr. Manoj Patil, learned Advocate appearing for the Appellant requested to adjourn the matter and accordingly this Court adjourned the matter to 13th January 2023. On 13th January 2023, the matter was adjourned to 20th January 2023. Thereafter, the matter came up before this Court on 14th February 2023 and the same was directed to be listed on 10th March 2023 at 2.30 pm for final hearing. Thereafter, again on the request of the learned Advocates the matter was adjourned to 23rd March 2023 and on 23rd March 2023, it was again adjourned to 24th March 2023. On 24th March 2023 it was adjourned to 16th June 2023.

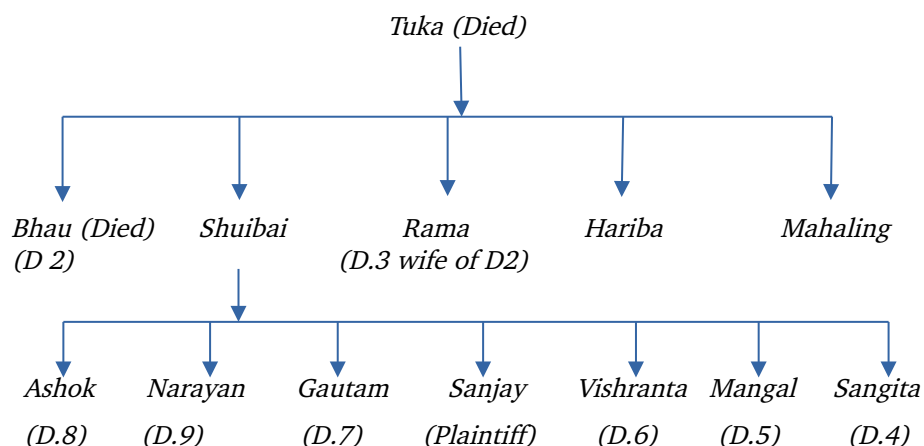
4. Again as the matter was not appearing, learned Advocate appearing for the Respondent No.1 mentioned the matter on 26th June 2023 and as the Respondent No.1 is serving in Army and he is retiring within short period, the matter was directed to be placed on 28th June 2023. On 28th June 2023 the matter was heard and after hearing the matter

the same was adjourned to 4th July 2023.

5. During the hearing conducted on 28th June 2023, the following factual position was brought to the notice of this Court. All the Respondents who are co-sharers of the property have sold the property to the present Appellant except the Respondent No.1 who has got 1/9th share in the property. It is admitted position that the Appellant is in possession of the suit property. In view of the above position, a suggestion was given by this Court to the learned counsel of the Appellant as well as Respondent No.1 that since the Respondent No.1 is only claiming 1/9th share and admittedly, other co-sharers have sold the property by registered sale deed to the Appellant and as the Appellant is in possession of the suit property, the said 1/9th share of the Respondent No.1 can also be purchased by the Appellant by paying market consideration. It is significant to note that the suggestion given was payment of the present market price of 1/9th share of the Respondent No.1. Both the learned Advocates took time to take instructions. Mr. Manoj Patil, learned counsel appearing for the Appellant has stated that he has taken instructions and the Appellant is ready to purchase 1/9th share of the Respondent No.1 by paying the present market price. However, today, Mr. Rahul Tiwari, Advocate instead of Mr. Sanjeev Kumar Deore, Advocate appeared in the morning session for Respondent No.1 and stated that he has received the papers yesterday and therefore, he is seeking two weeks time for arguing the matter. In view of this development, Mr. Deore, learned Advocate earlier appearing for the Respondent No.1 was requested to remain present in the Court in the afternoon session as the matter was part-heard.

6. Mr. Deore, learned counsel appearing for the Respondent No.1 states that on very day i.e. on 28th June 2023 the papers along with No Objection was taken from him. Mr. Deore, learned counsel appearing for the Respondent No.1 states that Mr. Sachin Ashok Kurne @ Mane took the papers and also his NOC for engaging another Advocate on behalf of the Appellant.

7. It is significant to note that the said Sachin Ashok Kurne @ Mane is the son of Respondent No.8 i.e. Ashok Bhau Kurne @ Mane who has already sold his share to the Appellant No.1. In fact, when this Court gave suggestion on 28th June 2023 that the Appellant can purchase 1/9th share of Respondent No.1, at that time only this Court has expressed that the suit appears to have been filed by the Respondent No.1 in collusion with other family members as all co-sharers who are family members of the Respondent No.1 – Sanjay Bhau Mane have executed the registered sale deed dated 10th July 1996 in favour of the Appellant. The genealogy of the family which is on page 30 is as under :-



The said sale deed was executed by the father of the present Respondent No.1 – Bhau as well as three sons.

8. It is also admitted position that three daughters viz. Vishranta, Mangal and Sangita have also challenged the present impugned judgment and decree of the learned Trial Court and the learned Appellate Court by filing Second Appeal (St.) No.35370 of 2017. By order dated 3rd October 2017, a learned Single Judge dismissed the Second Appeal filed by Smt. Shiubai Bhau Mane as well as three daughters i.e. Sangita, Mangal and Vishranta.

9. The factual position on record clearly shows that Sachin Ashok Mane @ Kurne is looking after the present Second Appeal on behalf of Respondent No.1 – Sanjay Bhau Mane. Father of said Sachin i.e. Ashok (Def. No.8) had

executed registered sale-deed dated 10th July 1996 in favour of the present Appellant. Said Sachin Ashok Mane @ Kurne who is present in Court tenders photocopy of his Aadhar Card which is taken on record and marked 'X' for identification. Said Ashok has sold his share in the suit property. Therefore, in fact, on 20th June 2023 after hearing the learned Advocate of the Appellant this Court has expressed that the suit appears to be collusive. However, as the Respondent No.1 is serving in Army and just to ensure that he has been paid market price of his 1/9th share, a suggestion was given to both the parties that the Appellant can purchase 1/9th share of the Respondent No.1 – Sanjay Mane at the present market price and when the Appellant has expressed willingness to purchase the said share at the present market price, at that stage, a request was made by Advocate Mr. Rahul Tiwari seeking permission to file vakalatnama and grant adjournment.

10. Therefore, prima facie, as this is not a bonafide proceeding, the Respondent No.1 is not entitled for out of turn hearing.

11. For the above reasons, orders dated 4th November 2019, 21st September 2022 and 9th December 2022 and all orders directing expeditious hearing of the Second Appeal are recalled.

12. Second Appeal be heard as per its own turn. Interim order to continue till the final disposal of the Second Appeal."

(Emphasis added)

2. The factual position set out in the above Order makes it very clear that the present proceedings being prosecuted on behalf of the Applicant i.e. Respondent No.1 by the persons who have already sold the land to the Appellant in Second Appeal No.255 of 2019.

3. On the earlier dates, the Applicant – Sanjay Bhau Mane was

personally present in Court. He again submitted that he is serving in Army and going to retire shortly. In view of the said submission of the Respondent No.1, Mr. Manoj Patil, learned Counsel for the Appellant in Second Appeal No.255 of 2019 has been requested to take instructions from the Appellant whether the Appellant is ready and willing to pay market price of 1/9th share of the Applicant – Sanjay Bhau Mane and some additional compensation. As the Applicant is serving in Army, Mr. Manoj Patil, learned Counsel for the Appellant, on instructions, states that the Appellant is ready and willing to pay present market price of 1/9th share of the Respondent No.1 as recorded in the Order dated 4th July 2023 as well as additional compensation.

4. However, Mr. Rahul Tiwari, learned Counsel for the Applicant states that his instructions are not to accept the said proposal and the Applicant is interested only in 1/9th share of the land. Mr. Manoj Patil, learned Counsel for the Appellant submits that apart from the contentions which are raised in Second Appeal, the suit land is only 96 R and approximately 1/9th share of the Applicant will come to 10.66 R. He submits that standard area of the land as per the *the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947* (“**said Act**”) is 20 R for Jirayat land and as per Sections 3 and 4 of the said Act, land admeasuring less than 20 R will be fragment and therefore there is prohibition of actual partitioning the land. He submits

that even if the Second Appeal is dismissed and 1/9th share is granted to the Applicant, then also the land cannot be partitioned as the same will be hit by the provisions of the *Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947*. In spite of this position, Mr. Rahul Tiwari, learned Counsel for the Applicant / Respondent No.1 states that he has instructions only to pray for partition of 1/9th share of the land.

5. Thus, the conduct of the Applicant in refusing to accept the present market rate of said 1/9th share as well as some additional compensation further substantiates what is stated in Order dated 4th July 2023. Accordingly, no case is made out for recall of the Order dated 4th July 2023.

6. The Interim Application is dismissed, however, with no Order as to costs.

[MADHAV J. JAMDAR, J.]