

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

FIRST APPEAL NO.418 OF 2019

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Mr. Ashok Jasraj Jain

..Appellant

Versus

Smt. Sushila Jagdish Kapadia & Ors.

..Respondents

Mr. Mohit Khanna a/w Amit Mehta, Vinayak Shukla, Hitesh Mishra i/by Amit Mehta, for the Appellant.

Mr. Girish Godbole, Senior Advocate a/w Murtuza Federal, Pallavi Ghaisas, Sudarshan Satalkar & Aarooha Kulkarni i/by Federal & Co., for the Respondent Nos.2 to 4.

Mr. Aditya P. Shirke, for the Respondent Nos.5 to 8 in FA/418/2019 & for Appellants in FAST/13643/2019.

Mr. Amol Kapadia, Respondent No.2/Original Plaintiff No.2 and for the estate of late Sushila Jagdish Kapadia, Respondent No.1/Original Plaintiff No.1(virtually).

Mr. Azim Faizulla Tapia, Respondent No.3/Original Plaintiff No.3 and as constituted attorney of Respondent No.4, Javed Faizullah Tapia.

Mr. Ashok Jasraj Jain, Appellant and Mr. Manish Kamlakar Patil, Respondent No.8 (for himself & as the Constituted Attorney of Respondent Nos.5 to 7).

CORAM : KISHORE C. SANT, J.

DATE : 30th JANUARY, 2024

PC.

1. Parties to the Appeal have entered into settlement and prepared consent terms. Respondent No.4 is represented by Respondent No.3, as Respondent No.4 has executed Power of Attorney in favour of Respondent No.3. Respondent Nos.5, 6 and 7

have executed Power of Attorney in favour of Respondent No.8. In so far Respondent No.9 is concerned, a prayer is made seeking leave to delete his name, as there is no decree against him.

2. Leave granted.

3. Respondent No.1 died during pendency of the Appeal. Her son who is sole executor of her Will is also virtually present. Parties are duly identified by their respective advocates.

4. This Court by order dated 25th January, 2024 had allowed the Appellant to carry out amendment by deleting name of Respondent No.1.

5. Appellant to carry out amendment forthwith.

6. Re-verification is dispensed with.

7. This Court is satisfied that Respondent Nos.3 and 8 are duly authorized by Respondent Nos.4, 5, 6 and 7 respectively. Copies of Power of Attorney are part of the consent terms. The consent terms are signed by Respondent Nos.2, 3 and 8. The said consent terms are taken on record and marked as "X" for the purpose of identification. Parties have accepted that the decree passed by the learned Civil Judge, Senior Division, Alibag will be satisfied. Appellant and Respondent Nos.2 to 4 together shall sell

the suit property to third person. The amount of 50% will go to Appellant. Respondent Nos.3 and 4 will get 12.5% each of the consideration amount. Respondent No.2 will get 12.5% for himself and 12.5% in the capacity as executor. Since the parties have signed consent terms and they are present in the Court, as indicated above, this Court finds that the Appeal can be disposed of in terms of the consent terms. Consent Terms are as under :-

*CONSENT TERMS
BETWEEN*

1. Appellant

And

2. Respondent Nos.1 to 4 (Original Plaintiffs)

And

3. Respondent Nos.5 to 7 (Original Defendant Nos.i to 3)

And

4. Respondent No.8 (Original Defendant No.4)

A. Since there is no decree in favour of Original Defendant No.6 (Respondent No.9 herein), the Appellant at his own risk seeks deletion of Respondent No.9 from the aforesaid First Appeal No. 418 of 2019, with the permission of the Hon'ble Court.

B. Mrs. Sushila Jagdish Kapadia (Respondent No.1) died on 19th December 2023 leaving behind her only natural heirs, i.e., Respondent No.2 and his brother, Mr. Deepesh Jagdish Kapadia. The said Sushila had executed her Last Will and Testament dated 26th April 2010 appointing Respondent No.2 and her deceased husband, the late Mr. Jagdish Kapadia, as her executors, out of which Mr. Jagdish Kapadia pre-

deceased her on 13th February 2014 thereby leaving behind Respondent No.2 as her sole executor of her Last Will and Testament dated 26th April 2010. The other natural heir of deceased Respondent No.1 has approved these Consent Terms and has authorized Respondent No.2 to sign these Terms in his capacity as the sole executor of the Last Will and Testament dated 26th April 2010 of Mrs. Sushila Jagdish Kapadia (Respondent No.1) by his email/letter dated 28th January 2024.

- C. By consent of parties hereto, the above appeal stands settled and compromised in the following terms: -*
- 1. The present proceedings concern property being all that piece and parcel of agricultural land, aggregately admeasuring 2-53-7 H-Ar.-p, equivalent to 25,370 sq. meters, bearing Old Gut Nos.543/1 and 663 (and now bearing Gat No.403/1 admeasuring 2-01-7 Ha-Ar.-p. assessed at Rs.24.36 p and Gat No.487 admeasuring 0-52-0 Ha-Ar.-p. assessed at Rs.o.95 p, and) of Village: Zirad, Taluka: Alibaug, District: Raigad, Sub-Registration District: Alibaug, ("the said Land").*
 - 2. In relation to the said Land, it is agreed, declared, confirmed and therefore, so ordered that:-*
 - (i) neither parties have created any charge, mortgage, or encumbrance by way of lease, tenancy or right of residence or third party rights of any kind whatsoever nor entered into any agreement and/or arrangement with any other person in respect of the said Land.*
 - (ii) Respondent Nos. 5 to 7 and Respondent No.8 have no right and/or title, interest and/or claim in the said Land or any part thereof and they undertake to this Hon'ble Court to not make any claim or demand against and/or*

in relation to the said Land or any part thereof at any time in the future.

- (iii) the Appellant and Respondent Nos.2 to 4 shall jointly sell and transfer the said Land to a third party by execution of a Deed of Conveyance in which the Appellant shall be the Vendor, Respondent No.2 shall be the First Confirming Party for himself and in his capacity as the sole executor of the Last Will and Testament dated 26th April, 2010 of Respondent No.1 and the Respondent Nos. 3 and 4 shall be the Second Confirming Party, on such terms and conditions that are mutually agreed between the Appellant, Respondent Nos.2 to 4 and such prospective third-party purchaser.*
- (iv) upon execution of such Deed of Conveyance, such prospective purchaser shall become the absolute owner of the said Lands and shall have peaceful, vacant possession thereof and the Parties herein agree and declare that neither themselves nor anyone claiming under them shall have any rights, claims or demands qua the said Land or in relation thereto.*
- (v) as regards the sale consideration /proceeds from the sale referred to in Clauses C (2)(iii) and C (2)(iv) above, the Appellant shall be entitled to 50 % of the sale proceeds/consideration from such sale and the balance 50 % of the sale proceeds /consideration shall be equally distributed in four parts amongst each of Respondent Nos. 2 to 4 and the fourth part to Respondent No.2 in his capacity as the sole executor of the Last Will and Testament dated 26th April 2010 of the deceased Respondent No.1 which shall be received and held by Respondent No.2 for the benefit of the beneficiary/ies under the said Will. The Appellant and Respondent Nos.2 to 4 shall be responsible and liable for their respective tax liability for the monies received*

by them as aforesaid. It is further agreed, confirmed, declared and ordered that no consideration/sale proceeds whatsoever shall pass to Respondent Nos. 5 to 8 on such sale as all parties hereto agree and confirm that the same was paid and settled by Appellant and Respondent Nos. 1 to 4 to the respective parties on execution of requisite documents with them in the past.

- (vi) the Appellant and Respondent Nos.2 to 4, may execute MOU, Term-Sheet, and/or any other writing with such third-party purchaser as and when required and as may be mutually agreed between them for the purposes of confirming the execution of these Consent Terms, for facilitating the transaction referred to in Clauses C (2) (iii) and C (2)(iv) above and to assure, convey, and confirm title to and absolute ownership of the said Land upon the third-party purchasers.*

3. The Appellant and Respondent Nos. 2 to 4 agree and undertake to this Hon'ble Court that:-

- (i) they shall execute and register before the Sub Registrar of Assurances, if required, all deeds, documents, declarations as may be required by the prospective third-party purchaser for sale and transfer of the said Land and shall attend the office of the Sub Registrar of Assurances or any other officer or authority in this regard including revenue authorities and render full co-operation for sale, completion of sale and transfer of the said Land in favour of the prospective third-party purchaser and mutation thereof in the revenue records.*
- (ii) they shall do such acts, deeds or things as may be required to be done as per the Term Sheet and/or any other writing for sale of the said Land on the terms recorded herein and for completion of sale/transfer to the prospective third party Purchaser.*

4. *Upon such sale of the said Land to the prospective third party purchaser and execution and registration of Conveyance Deed in favour of third party prospective purchaser in terms hereof and upon receipt of the full consideration/sale proceeds by the Appellant and Respondent Nos.2 to 4 respectively as per the terms recorded herein, the Appellant and Respondent Nos.2 to 8 agree and state that: -*
 - (i) *the decree dated 22nd January 2019 passed by the Ld. Trial Court in the captioned Special Suit No.49 of 2011 before the Court of the Hon'ble Civil Judge, Senior Division, Alibag, Raigad shall stand marked fully satisfied in terms hereof.*
 - (ii) *upon the decree dated 22nd January 2019 passed by the Ld. Trial Court in the captioned Special Suit No.49 of 2011 before the Court of the Hon'ble Civil Judge, Senior Division, Alibag, Raigad being marked fully satisfied in terms hereof, the Sale Deed dated 3 February 2011 executed by Respondent Nos. 5, 6 and 7 in favour of the Appellant shall stand valid and binding.*
 - (iii) *the Respondent Nos. 2 to 4 shall be entitled to withdraw from the Court of Hon'ble Civil Judge, Senior Division Alibaug, Raigad the sum of Rs.1,39,90,500/- (Rupees One Crore Thirty-nine Lakhs Ninety Thousand Five Hundred only) deposited by them in pursuance to the aforesaid decree dated 22nd January 2019 (para 7 of the operative part thereof) along with the interest that may have been accrued or received thereon and the Appellant and the other Parties hereto irrevocably consent to the same.*
5. *The captioned First Appeal shall stand disposed off in terms of these Consent Terms and all orders passed therein to stand vacated.*

6. *These Consent Terms and the order passed in terms thereof shall per-se be executable.*
7. *The Appellant and the Respondent Nos.2 to 4 are at liberty to apply to this Hon'ble Court for execution and/or implementation of these Consent Terms.*

Dated this 29th day of January, 2024

8. The Appeal stands disposed of in view of the consent terms.
9. Appellant shall be entitled to refund of the Court fees as per rules.
10. The undertakings provided in the aforesaid Consent Terms by the parties are accepted as undertakings by the parties to the Hon'ble Court.

[KISHORE C. SANT, J.]

Corrected pursuant to speaking to minutes of the order dated 2nd February, 2024.