

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

**SECOND APPEAL NO. 196 OF 2021
ALONGWITH
INTERIM APPLICATION NO. 1471 OF 2021
AND
INTERIM APPLICATION NO. 15121 OF 2023**

Smt. Survarna Ishwarappa Jamma
and Ors.

} ***..Appellants/
(Orig. Plaintiffs)***

: *Versus* :

Smt. Mahadevi Mallikarjun Bagelli

} ***..Respondent
(Orig. Defendant)***

Mr. Pankaj Jain, for the Appellants.

Mr. A.A. Valsangkar a/w. Mr. Samir A. Kumbhakoni, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 6 May 2024.

P.C. :

1) The present Appeal is filed challenging the Decree dated 18 March 2021 passed by the District Judge, Solapur in Regular Civil Appeal No.192/2017 by which the First Appellate Court has allowed the Appeal filed by the Respondent and has set aside the Decree dated 25 July 2017 passed by the 9th Joint Civil Judge Junior Division, Solapur in Regular Civil Suit No. 527/2011.

2) I have heard Mr. Jain, the learned counsel appearing for the Appellants and Mr. Valsangkar, the learned counsel appearing for the Respondent.

3) After extensive hearing of the Appeal, I am of the view that the Plaintiffs are entitled to 1/7th share in the suit property. That therefore though the suit for recovery of possession of the entire suit property and mesne profits could not have been decreed, the Trial Court ought to have decreed the suit to the extent of recovery of Plaintiffs' 1/7th share.

4) After this Court was about to reverse the Decrees of the Trial and the First Appellate Court by granting 1/7th share to the Plaintiffs, Mr. Valsangkar, after taking instructions from his client, who is present in the Court, would submit that, instead of sub-dividing the suit property for the purpose of granting 1/7th share to the Plaintiffs, the Defendant is willing to pay amount of Rs.11,00,000/- to the Plaintiffs in lieu of their 1/7th share in the suit property. This arrangement is acceptable to Mr. Jain who has taken instructions on behalf of his clients, who are also personally present before the Court. Mr. Valsangkar would submit that amount of Rs.11,00,000/- shall be paid by the Defendant to the Plaintiffs on/or before 15 July 2024.

5) Both the learned counsel agree that this Court need not record reasons for granting 1/7th share in the suit property to the Plaintiffs. In that view of the matter, the Second Appeal is disposed of by passing following order :

(i) The Plaintiffs are held entitled to recover 1/7th share in the suit property. The prayer for *mesne* profits however stands rejected.

(ii) Instead of carving out and handing over possession of 1/7th share in the suit property to the Plaintiffs, the Defendant shall pay to the Plaintiffs, an amount of Rs.11,00,000/- upon receipt of which, the Plaintiffs shall give up all their claims in respect of 1/7th share in the suit property granted as per this order and they shall not have any right or claim in respect of the suit property.

(iii) Defendant shall pay amount of Rs.11,00,000/- to the Plaintiffs on/or before 15 July 2024. It is made clear that if Defendant makes any default in payment of Rs.11,00,000/- to the Plaintiffs by the stipulated time, in addition to the remedy of initiation of contempt proceedings against the Defendant, Plaintiffs shall be entitled to recover possession of 1/7th share in the suit property by filing execution proceedings before the executing Court.

6) With the above directions, the Second Appeal stands disposed of. In view of rejection of Appeal, Interim Application Nos.1471/2021 and 15121/2023 filed for stay/injunction and other reliefs do not survive. The same also stand disposed of.

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[SANDEEP V. MARNE, J.]