



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

901 SECOND APPEAL NO. 358 OF 1992

Maroti Devrao Biradar, (died)
Through his L.Rs.
Vyankatrao s/o. Maroti Biradar
Age:- 70 years, Occu. Agril.,
R/o Shelgi, Tq. Nilanga,
District: Latur

...Appellant

Versus

1. Narsing Shamrao Biradar,
died through Legal heirs
- A) Vandana Bai Narsing Biradar (Wife)
Age: 62 years, Occu:- Household,
- B) Prakash Narsing Biradar (Son)
Age:-42 years, Occu: -Agri.
- C) Deelip Narsing Biradar (Son)
Age: 24 years, Occu:- Agri.
All R/o. Shelagi, Po. Aurad
Shahjani, Tq. Nilanga, Dist. Latur
- D) Shobhabai Prabhu Umare (Daughter)
Age:- 34 years, Occ:- Household,
R/o. Malegaon Kalyani,
Taluka Nilanga, Dist. Latur.
- E) Mangalbai Vilas Umare (Daughter)
Age:- 33 years, Occu:- Household,
R/o. Badur, Tq. Nilanga, Dist. Latur.
All occupation Agriculture,
R/o. Shelgi, Ta. Nilanga, Dist. Latur
2. Nivarati Parbata (Genative father's
name Ganpati Biradar), Age:- 31 yrs.
3. Vishwambhar Devrao Biradar,
Age:-45 years,
4. Govind Ganpati Biradar,
Age:-46 years,

5. Babu Ganpati Biradar
died through legal heirs
- 5-A) Damyanti w/o. Babu Biradar,
Age:- 49 years, Occu:- Household,
- 5-B) Harishchandra S/o. Babu Biradar,
Age:-30 years, Occu:- Agril,
- 5-C) Sanjay S/o. Babu Biradar,
Age:- 30 years, Occu:- Agril,
All R/o. Shelgi, Tq. Nilanga, Dist. Latur
6. Bhimrao Ravji Biradar, (Died)
7. Shrirang Keshav Biradar
Died through legal heirs
- 7-A) Shevantabai W/o. Shrirang Biradar,
Age:- 60 years, Occu: - Household,
R/o. Shelgi, Tq. Nilanga, Dist. Latur.
- 7-B) Ram S/o. Shrirang Biradar,
Age:- 40 years, Occu:- Agri,
R/o. As above.
- 7-C) Sukumar W/o. Baburao Barole,
Age:- 35 years, Occu:- Household,
R/o. Pandhri, P.O. Hulsur,
Tq. Balki, Dist. Bidar (Karnataka)

...Respondents

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Advocate for Appellant : Ms. Rekha M. Mohale Choudhari

Advocate for Respondent Nos. 1-a to 1-e : Mr. V. C. Solshe

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WITH
CIVIL APPLICATION NO. 414 OF 2003 IN SA/358/1992

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CORAM : ROHIT W. JOSHI, J.

DATE : 04th MARCH, 2025

ORAL JUDGMENT.:

1. The present Second Appeal was admitted on 20th August 1992,

however, substantial question of law was not framed while admitting the appeal due to inadvertence. Thereafter on 29.02.2024 the following substantial question of law has been framed:-

i. Whether the present appellant had given special authority to his advocate in Regular Civil Suit No.57 of 1971 to compromise the matter ?

2. The present Second Appeal is filed by the original plaintiff to take exception to judgment and decree dated 15.01.1986 passed by the learned Civil Judge, Junior Division, Nilanga in Regular Civil Suit No.90 of 1981 as also the judgement and decree dated 03.01.1992 passed by the learned Third Additional District Judge, Latur in Regular Civil Appeal No.23 of 1986, whereby the judgment and decree passed by the learned trial Court dismissing the suit of the plaintiff came to be upheld. The plaintiff was defendant No.2 in RCS No.57 of 1971. The other defendants in the suit are family members. Defendant No.3 is real brother of the plaintiff. Defendant No.1 is the plaintiff in earlier Civil Suit No.57 of 1971. The said Civil Suit No.57 of 1971 came to be disposed of vide a compromise decree in which compromise was recorded on 09.01.1973. The plaintiff who is defendant No.2 in the said Suit was not personally present. It will be pertinent to mention that out of the seven defendants four defendants were personally present and

three defendants including the present plaintiff were represented by the Advocate while the compromise was recorded. The plaintiff who is defendant No.2 in the said suit was concerned with an agricultural land bearing Survey No.53/A which was one of the suit properties involved in Regular Civil Suit No.57 of 1971. This land was being jointly cultivated by the plaintiff/defendant No.2 and his real brother i.e. defendant No.3. It needs to be mentioned that admittedly defendant No.3 was personally present and has confirmed the fact of compromise before the learned Court while the compromise was recorded. In this backdrop, the present plaintiff filed Regular Civil Suit No.90 of 1981 in which a declaration is sought that the decree passed in RCS No.57 of 1971 on 09.01.1973 is null and void, ineffective and inoperative and not binding on the plaintiff being an outcome of fraud practiced upon by the plaintiff. A further prayer is made for injunction restraining the execution of the said decree. The said suit came to be dismissed vide judgment and decree dated 15.01.1986. Aggrieved by dismissal of the suit the plaintiff preferred appeal being Regular Civil Appeal No.23 of 1986 which met the same fate. In this backdrop, the present Second Appeal came to be filed.

3. I have heard the learned Advocate for the appellant/original plaintiff. She contends that the Code of Civil Procedure specifically

prescribes a procedure for passing a compromise decree. She places reliance on the Order 23 Rule 3 in order to contend that the learned Court which has recorded the compromise and passed compromise decree has failed to fulfill the obligations imposed by the said provision in as much as the learned Court did not personally confirm from the present plaintiff and two other defendants as to whether the subject matter of the suit was compromised between the plaintiff and them. She places reliance upon judgement of the Hon'ble Supreme Court in the matter of ***Jamilabai Abdul Kada Vs. Shankarlal Gulabchand and Ors.*** reported in AIR 1975 Supreme Court 2202 to buttress her contention. She contends that an Advocate can represent the party for recording compromise only in two contingencies, namely that he acts in good faith for the benefit of his client and if time permits then he should necessarily consult his client and take his consent before appearing to record compromise on his behalf.

4. Per contra, learned Advocate Mr. Solshe appearing for legal representatives of the contesting respondent who is plaintiff in the earlier Civil Suit contends that the declaration is sought alleging fraud. He refers to the plaint to point out that no allegations have been made against any particular person as regards fraud or misrepresentation. Referring to the evidence of the learned Advocate who had represented the plaintiff i.e. defendant No.2 in the earlier Civil Suit as also the other

defendants, he states that the said Advocate was examined as a witness on behalf of the plaintiff and he has not supported the case of the plaintiff. He further refers to findings recorded by the learned Courts and justifies the dismissal of suit filed by the plaintiff.

5. I have heard the learned Advocates as above and also perused record of the case with their able assistance. I have perused the compromise decree that is passed in the earlier Civil Suit. It appears from the compromise decree that out of seven defendants four defendants were personally present in the Court, particularly, defendant No.3 i.e. real brother of the present plaintiff was also personally present. He was cultivating land bearing Survey No.53/A jointly with the present plaintiff. The contention of the plaintiff is that the compromise decree is adverse to his interest *qua* land bearing survey No.53/A. If that be so it was also adverse to the interest of defendant No.2 ie. his real brother who was jointly cultivating the land with him. Yet he has confirmed the compromise and has not raised any dispute with respect to the same thereafter.

6. I also find substance in the contention of the learned Advocate for the respondent that in the plaint no allegations of fraud have been levelled against any of the defendants including the brother of plaintiff. It will be pertinent to mention that four defendants were personally

present before the Court. They have personally signed the settlement terms on the basis of which compromise decree came to be passed. There is no allegation worth mentioning against either of them. Likewise, there is no allegation even against the Advocate that he acted in bad faith or in collusion with the plaintiff or practice fraud. In this regard the allegations in paragraph 1 which are referred by the learned Advocate for the appellant it is found that the word fraud is mentioned without providing any particulars as regards the mode and manner in which the same is committed or practiced.

7. Having perused the pleadings in the plaint, I am of the considered opinion that the plaintiff has miserably failed to provide necessary particulars with respect to alleged fraud. A bald assertion is made that specific instructions to compromise the matter were not given to the Advocate. Likewise, it is vaguely stated that the other defendants acting in collusion mislead the Advocate. These pleadings taken on their face value are grossly inadequate to satisfy the requirements of Order 6 Rule 4. Such, being the case in my considered opinion the pleadings were insufficient even to call for framing of issues as regards fraud or collusion. Legal position in this regard is well settled by a catena of decisions of Hon'ble Supreme Court and this Court including in the matters of ***Bishundeo Narain and Anr. Vs. Seogeni Rai and Anr.*** Reported in AIR 1951 SC 280; ***Shanti Budhiya Vesta***

Patel and Anr. Vs. Nirmala Jayprakash Tiwari & Ors. reported in (2010) 5 SCC 104 and *Kisan Ramji Khandare Vs. Kausalyabai Gangaram Korde & Ors.* reported in 2007 (4) Mh.L.J. 43.

8. That apart the compromise is recorded in the year 1971. The suit is filed in the year 1981 after a period of around 10 years. The parties to compromise are the family members of the plaintiff. Defendant No.3 in the said suit is his real brother. The plaintiff has not offered any explanation for the delay of 10 years by giving any proper explanation for the same. He has merely stated that he was not aware about the compromise decree, which again in my considered opinion is not sufficient to explain the delay. Explanation in this regard ought to have been given with proper and necessary details and particulars. I am of the considered opinion that the plaint averments are deficient with respect to the details that ought to have been provided as per mandate of Order 7 Rule 1(e).

9. Apart from this, the plaintiff has examined the Advocate who had appeared on his behalf to record the compromise. The Advocate has not supported the cause of the plaintiffs. The plaintiff did not seek leave of the Court to conduct cross-examination of the Advocate. The statements of witness of the plaintiff do not support his allegations in the plaint.

10. As regards the judgments of the Hon'ble Supreme Court relied

upon the learned Advocate for the appellant there is nothing to infer that the learned Advocate did not act in good faith while appearing on behalf of the present plaintiff in recording the compromise. The Hon'ble Supreme Court has stated that while recording compromise on behalf of clients it will be prudent and proper for Advocate to consult their clients and take their consent if there is an opportunity. The learned Advocate has stated in his deposition that he had taken consent and had also consulted defendant No.2, i.e., present plaintiff and other defendants before confirming the fact of compromise. In that view of the matter, in my considered opinion the judgment of the Hon'ble Supreme Court does not further the cause of the appellant.

11. Both the learned Courts have considered the controversy in *apt* details and have given cogent reasons for not accepting the case of the plaintiff. The reasons recorded by the learned Courts exhibit proper appreciation of evidence on record. The reasons cannot be said to be perverse by any stretch of imagination. In such circumstances, I am inclined to confirm the decree of dismissal of suit passed by the learned Trial Court which is in term is confirmed by the learned Appellate Court. The Second appeal is therefore dismissed.

[ROHIT W. JOSHI J.]