



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.327 OF 2011

1. Sanjay s/o Damodhar Thorat,
Age: 40 years, Occu. Agriculturist,
R/o: Janephal, Tq. Vaijapur,
Dist. Aurangabad.
2. Subhash s/o Damodhar Thorat,
Age: 36 years, Occu. Agriculturist,
R/o: Janephal, Tq. Vaijapur,
Dist. Aurangabad.
3. Chandrabhagabai w/o Damodhar Thorat,
Age: 60 years, Occu. Agriculturist,
R/o: Janephal, Tq. Vaijapur,
Dist. Aurangabad. ... **Appellants.**
(Ori.def.Nos.1 to 3)

VERSUS

1. Smt. Anjanabai w/o Rangnath Thorat,
Died Through L.Rs.
- 1A) Kashinath s/o Rangnath Thorat,
Age: 50 Years, Occu: Agril.,
R/o: Janephal, Tq. Vaijapur,
Dist. Aurangabad.
- 1B) Vishvanath s/o Rangnath Thorat,
Age: 45 Years, Occu: Agril.,
R/o: Janephal, Tq. Vaijapur,
Dist. Aurangabad.
- 1C) Machindra s/o Rangnath Thorat,
Age: 42 Years, Occu: Agril.,
R/o: Janephal, Tq. Vaijapur,
Dist. Aurangabad.

1D) Gorakh s/o Rangnath Thorat,
Age: 40 Years, Occu: Agril.,
R/o: Janephal, Tq. Vaijapur,
Dist. Aurangabad.

1E) Vithal w/o Laxman Thorat,
Age: 48 Years, Occu: Agril.,
R/o: Janephal, Tq. Vaijapur,
Dist. Aurangabad.

1F) Heerabai w/o Popat Thorat,
Age: 40 Years, Occu: Agril.,
R/o: C/o Rajaram Shinde,
R/o: Aghur, Tq. Vaijapur,
Dist. Aurangabad.

1G) Jagdish s/o Popat Thorat,
Age: 21 Years, Occu: Agril.,
R/o: Aghur, Tq. Vaijapur,
Dist. Aurangabad.

... Respondents
(Orig. Plaintiff)

**WITH
CIVIL APPLICATION NO. 12079 OF 2022
IN SA/327/2011**

...
Advocate for Appellants : Mr. Shingare K. F.
Advocate for Respondent Nos.1A, 1C to 1G : Mr. Sandip R.
Andhale.
...

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 16.10.2025

PRONOUNCED ON : 17.10.2025

JUDGMENT :

1. Heard both sides finally with their consent.

2. Appellants have taken exception to the judgment and decree passed by Trial Court in Regular Civil Suit No.22 of 2006 which is further confirmed by Lower Appellate court in Regular Civil Appeal No.236 of 2008. Appellants are original defendants. Respondent No.1 had filed Regular Civil Suit No.22 of 2006 for declaration and possession. Parties are referred to by their original status in the suit.

3. Respondent is mother-in-law of the appellant/defendant No.3. She had five sons including husband of defendant No.3 Damodhar. Appellant Nos.1 and 2 are the sons of Damodhar. The subject matter is land Gut No.89 measuring 6 Acre 10 R. which was allotted to the plaintiff in a partition which took place in 1983. Damodhar was also allotted land Gut No.79 which was subsequently alienated by him to the extent of 4 Acre 20 R. vide sale deed dated 10.10.1983.

4. It is the case of the plaintiff that she was unable to cultivate her land allotted to her and her son Damodhar and grandsons were handed over the possession of suit land for cultivation on *Batai* basis. It is further contended that they took disadvantage and got themselves mutated in the record of right

with an intention to grab the suit land. She was required to file Regular Civil Suit No.283 of 1996 for declaration and possession against Damodhar and appellant Nos.1 and 2.

5. Regular Civil Suit No.283 of 1996 was compromised vide terms of settlement vide Exh.19. A compromise decree was passed on 19.01.1998. It was agreed that defendants in that suit would pay Rs.2,000/- to the plaintiff and then defendants would become owner of the land after demise of plaintiff. There was non-compliance of the terms of the settlement which constrained present plaintiff to file Regular Civil Suit No.268 of 2003 again for declaration and possession. It was dismissed for default on 21.12.2004. Damodhar and present defendants refused to abide by the compromise decree which is cause of action to prefer present suit on 21.01.2006.

6. Appellants contested the suit on the ground that plaintiff is not the owner of the suit land. There was partition in the family and thereafter suit land was handed over to Damodhar and defendants. Plaintiff partitioned her share in favour of the defendants which is reflected in mutation entry No.736. As per the compromise decree passed in Regular Civil Suit No.283 of

1996, the defendants were paying her maintenance.

7. The oral evidence was led before the Trial Court by the parties. Trial Court decreed the suit vide judgment dated 28.07.2008. Being aggrieved, Regular Civil Appeal No.236 of 2008 was preferred which ultimately resulted into dismissal on 19.01.2011.

8. Learned counsel for the appellants Mr. Shingare submits that suit challenging the compromise decree passed in Regular Civil Suit No.283 of 1996 filed by the respondent is not maintainable. It is further submitted that plaintiff had filed one more Regular Civil Suit No.268 of 2003 for self same relief which was dismissed for default. It is submitted that present suit was barred by time. It is further submitted that both Courts below should not have gone into the terms of settlement and the alleged non-compliance.

9. Learned counsel Mr. Shingare further submits that the suit land was already allotted to deceased Damodhar and appellant Nos.1 and 2 and after death of respondent, they became absolute owner. It is submitted that both Courts below committed error of jurisdiction in holding that compromise

was unlawful without framing any issue. It is further contended that plaint is liable to be rejected as it is cleverly drafted for showing evasive cause of action.

10. Learned counsel Mr. Andhale for the respondents supports impugned judgments being concurrent findings of facts. He would submit that compromise decree passed in Regular Civil Suit No.283 of 1996 was never challenged by the respondent being unlawful or on the ground of fraud. The suit is predominantly for declaration of title and possession for not complying the terms of compromise decree. It is submitted that plaintiff cannot be prevented from filing suit just because there was compromise decree earlier. The terms of the settlement at Exh.10 paves way for the plaintiff to file suit. It is submitted that the conduct of the appellants is objectionable. They failed to pay maintenance to the plaintiff. Plaintiff is entitled to claim ownership over the suit land.

11. Present second appeal involves following substantial questions of law :

“(i) Whether the Regular Civil Suit No.22 of 2006 was maintainable when the earlier Regular Civil Suit No.268 of 2003 was dismissed for default for the same cause of action ?

*(ii) Whether Regular Civil Suit No.22 of 2006 is maintainable challenging the compromise decree passed in Regular Civil Suit No.283 of 1996 and that too in teeth of the law laid down in the matter of **Manjunath Tirakappa Malagi and another Vs. Gurusiddappa Tirakappa Malagi (Died through L.Rs.)** ; 2025 (3) Mh.L.J. 771.”*

12. The crucial issue needs adjudication is as to whether suit filed by the respondent for declaration of her title as well as declaration that compromise decree in Regular Civil Suit No.283 of 1996 is null and void and for possession is maintainable or not. Admittedly, Regular Civil Suit No.283 of 1996 was filed by the plaintiff for declaration of title and possession only. The parties to that suit arrived at settlement at Exh.10. A compromise decree was passed on 19.01.1998. Thereafter, Regular Civil Suit No.268 of 2003 was filed by the respondents for declaration and possession. No relief was solicited in respect of compromise decree. It was dismissed for default on 21.12.2004. The application for restoration of the suit was filed and withdrawn on 29.05.2005. Regular Civil Suit No.268 of 2003 was not decided on merits.

13. A careful perusal of the terms of settlement at Exh.10

which was part of compromise decree passed in Regular Civil Suit No.283 of 1996 shows that the suit land was agreed to be cultivated by Damodhar, appellant Nos.1 and 2 and in lieu of that plaintiff was to get Rs.2,000/- per annum. It was also agreed that the suit land was transferred to the appellants and their father. Hence, after demise of plaintiff, all the defendants were to continue to occupied as a owner and remaining members of the family would have no concern. Lastly, it is agreed that failure on the part of the appellants and their father in payment of maintenance would entail plaintiff to file the proceeding.

14. The parties are not disputing partition occurred in 1983 and land Gut No.89 which is a suit land was allotted to the plaintiff. A mutation entry No.736 at Exh.39 has been brought on record indicating that plaintiff by way of partition deed, partitioned the suit lands amongst Damodhar and appellant Nos.1 and 2. No partition deed is placed on record. There is no evidence on record to show that during life time of the plaintiff the ownership of the suit land was transferred to Damodhar or to appellants. The terms of settlement that ownership was previously transferred is a misconception. No

title could be transferred by way of mutation entry. I am of the considered view that title remained with the plaintiff till her life time.

15. A vital aspect of the settlement is that reservation of the right in favour of the plaintiff in case of non-compliance of the terms of settlement Exh.10. She was required to file Regular Civil Suit No.268 of 2003 for not paying her Rs.2000/- as a maintenance. A copy of the plaint discloses that the terms of settlement or the compromise decree was challenged by her. In the present suit, it was disclosed that she had filed Regular Civil Suit No.268 of 2003 and it was dismissed for default.

16. A careful perusal of the plaint in present Regular Civil Suit No.22 of 2006 shows that plaintiff did not challenge the compromise decree or the terms of settlement on ground of fraud, misrepresentation or suppression of facts. All the while, her grievance was that the appellants and deceased Damodhar failed to keep the promise of payment of maintenance and they wanted to grab the suit land. Thus, she is claiming enforcement of the compromise decree. Following are the reliefs prayed in the suit :

“(1) Kindly the suit of the plaintiff may be decreed with cost against defendant Nos.1 to 3.

(2) That, it may be declare that the plaitniff is a owner of the suit land Gut No.89 adm. 6 acres 10 gunthas situated at village Hilalpur, Tq. Vaijapur, by declarating compromise null and void of RCS No. 283/96.

(3) That kindly suit land may be put in possession of plaintiff.

(4) That, kindly any other suitable relief for which the plaintiff will found entitle may also be granted to the plaintiff and oblige.”

17. The relief of declaration in respect of compromise decree is ancillary which can be seen from the meaningful reading of plaint. In view of terms of settlement or the compromise decree, a right was reserved for the plaintiff to take recourse to the judicial proceedings, in case of non-compliance of the terms of the settlement. The present suit has fresh cause of action comprising of the events occurred after passing of compromise decree on 19.01.1998. I am of the considered view that plaintiff has not challenged the compromise decree.

18. The plaintiff was the owner of suit land. Due to her old age, she had inducted her son and grandsons in the suit land

for the purpose of cultivation. It was their mischief that they failed to pay maintenance, but proceeded to mutate their names which was attempt to grab the property/land of the old lady. She cannot be left remediless and Order 23 Rule 3-A of C.P.C cannot be an impediment for her. What is prohibited by Order 23 Rule 3-A is filing of fresh suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. Neither any appeal nor a separate suit is maintainable against consent decree. Only remedy is to approach the same court by way of review.

19. However, if the compromise on which the decree is based is sought to be enforced and the sufferer for non-compliance of the terms of settlement cannot be left remediless under the garb of Order 23 Rule 3-A. If the right is created in favour of a party as per compromise decree, the remedy has to be followed. The aggrieved party is always entitled to maintain a fresh suit and the non-compliance can be said to be fresh cause of action, notwithstanding any right is reserved for availing remedy as permissible in law.

20. Both Courts below recorded that there was non-

compliance of the terms of compromise decree on the part of the appellants and their father. It is not the purport of the judgments that the terms of the settlement are branded as unlawful or vitiated by any fraud or misrepresentation. On the contrary, both the Courts below recorded that the present suit is filed for enforcement for the terms of settlement. There is no merit in the submissions of Mr. Shingare that the compromise decree is treated to be unlawful by Courts below.

21. Learned counsel Mr. Shingare vehemently relied on the judgments of *Jethalal C. Thakkar and others Vs. Lalbhai Hir Lal Shah [1989 (0) BCI 52]*. I have gone through paragraph Nos.4, 5, 14, 15, 16. The facts are distinguishable. I have already observed that neither the compromise decree has been challenged by the plaintiff nor it is contended to be unlawful. This judgment will not help the appellants. Further reliance is placed on the judgment of *Valji Mavji Patel Vs. State of Maharashtra and others [2008 (4) ALL MR 580]* to buttress that consent decree is binding on the parties. The proposition cannot be doubted. Considering the difference in the facts, the judgment will not help the appellants. Further reliance is placed on the judgment of *M/s Sree Surya Developers and*

Promoters Vs. N. Shailesh Prasad [AIR 2022 Supreme Court 1031]. I have gone through paragraph No.57 which lays down that only remedy available to challenge the compromise or the agreement in passing the decree is to approach the same Court. This judgment also will not help the appellants because facts are distinguishable.

22. Learned counsel Mr. Shingare placed reliance on the judgment of *Manjunath Tirakappa Malagi and another Vs. Gurusiddappa Tirakappa Malagi (Dead Through L.Rs.)* principles expounded by the Supreme Court are that for challenging the compromise decree, fresh suit is not the remedy and the party has to approach the same Court. However, I have already observed that plaintiff is not challenging the compromise decree on any ground. This judgment will not help the appellants.

23. In the present suit, plaintiff has claimed declaration of ownership as well as possession. She asserted title on the basis of partition of 1983. The material on record corroborates her claim for declaration. In such a situation, the judgment of the Supreme Court cited by learned counsel Mr. Shingare in *Rajiv*

Gupta and others Vs. Prashant Garg and others [2025 INSC 552] cannot be made applicable. Considering paragraph Nos.63, 64, 65 of the cited judgment, I am of the view that the judgment will not help the appellants.

24. It is vehemently contended that suit is barred by limitation. The cause of action stated in the plaint is non-compliance of the compromise decree passed on 19.01.1998. The sequence of events are mentioned in the plaint post compromise decree. Her filing of two suits are also mentioned which indicates her attempts to secure enforcement of the compromise decree. The cause of action is continuous and evident from record. Though specific issue was not framed by the Trial Court, it is permissible for the appellants to agitate the point of limitation. Present suit filed on 21.01.2006 cannot be said to be barred by time. There is no merit in the submission of learned counsel Mr. Shingare in that regard.

25. In view of the above analysis, I find that suit filed by the plaintiff was maintainable and both substantial questions of law require to be answered in her favour. The concurrent findings of facts are found to be legal and plausible. Second

appeal is liable to be dismissed. I pass the following order :

- (i) Second appeal is dismissed.
- (ii) There shall be no order as to cost.
- (iii) In view of disposal of second appeal, pending civil application does not survive. Civil application as such is disposed of.

(SHAILESH P. BRAHME, J.)

...

vmk/-