

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.12 OF 2002

Laxman Chandra Khamkar & Ors.	...Appellants
<i>Versus</i>	
Ambubai @ Tai Balu Margale & Ors.	...Respondents

Mr. Mandar Limaye a/w. Mr. Vedant Bende, for the Appellants.
Mr. C. K. Bhangoji a/w. Mr. Tanaji V. Jadhav, for the Respondent
Nos.1a to 1c.

CORAM: MADHAV J. JAMDAR, J.
DATED : 21st JULY 2025

PC:-

1. Heard Mr. Limaye, learned Counsel appearing for the Appellants and Mr. Bhangoji, learned Counsel appearing for the Respondent Nos.1(a) to 1(c).

2. At the outset, both the learned Counsel state that the Respondent Nos.2 and 3 are formal parties. Accordingly, Mr. Limaye, learned Counsel appearing for the Appellants, on instructions, seeks leave to delete the Respondent Nos.2 and 3 from the array of the parties. Leave as prayed is granted.

Amendment be carried out forthwith. Re-verification is dispensed with.

3. Both the learned Counsel state that the parties have settled the dispute.

4. Mr. Limaye, learned Counsel appearing for the Appellants states that the Appellant No.1(a)/2-Jyotiba Laxman Khamkar is personally present in Court. He states that he is Power of Attorney Holder of Appellant Nos.1(b) and 1(c) and the said Power of Attorney is annexed to the Consent Terms from Pages 9 to 16.

5. Mr. Bhangoji, learned Counsel appearing for the Respondent Nos.1(a) to 1(c) states that the Consent Terms are also signed by the Respondent No.1(b). He states that the Respondent No.1b-Sunita Balu Margale is personally present in Court and she is the Constituted Attorney of the Respondent No.1(a) and 1(c). Copy of the said Power of Attorney is annexed to the Consent Terms from pages 17 to 23.

6. Both, the Appellant No.1(a)/2-Jyotiba Laxman Khamkar and Respondent No.1(b)-Sunita Balu Margale, who are personally present in Court state that the Appellants and the Respondent Nos.1(a) to 1(c) have settled the dispute in terms of the Consent Terms.

7. Accordingly, the said Consent Terms are taken on record and marked 'X' for identification. The said Consent Terms read as under:-

“CONSENT TERMS

*1. The predecessor of Respondent No.1 is the original plaintiff who filed Regular Civil Suit No. 11 of 1993 against the present Appellants (original Defendant Nos.1 and 2).The suit is filed for declaration that the Sale Deeds dated 01.03.1982 and 15.10.1992 executed by Janabai in favour of the Defendant No.1 and 2 herein are not binding on the share of the Respondent No.1 herein. The suit properties are Revision Survey No.22/8 (New Gut No.96), admeasuring 46 Aares, 5 Anna and 4 Paisa share, out of Revision Survey Nos.18/2 (New Gut No.21) and House Property situated in it admeasuring 2 Hectares 63 Aares and Revision Survey Nos.26/3 (New Gut No.104), admeasuring 14.2 Aares and Grampanchayat Property Nos.19 and 62 at Village :Ette (Devulwadi), Taluka Ajra, Dist. Kolhapur (hereinafter referred to as the "**suit properties**").*

2. The Learned Trial Court by Judgment and Decree dated 28.02.1997 declared that Sale Deeds dated

01.03.1982 and 15.10.1992 are not binding on the share of the Respondent No.1. The Learned Trial Court also declared that the Respondent No.1 and Appellant No.2 are having half share in Gut No.96 and the Respondent No.1 is having 3/4th share and the Appellant No.1 is having 1/4th share in land bearing Gut No.21. The Learned Trial Court also directed to hand over the possession of land bearing Gut No.104 (entire) and Gut No.21 to the extent of 3/4th share along with the house properties to the Respondent No.1.

3. The Appellants being aggrieved by the Judgment and Decree dated 28.02.1997, the Appellants preferred Regular Civil Appeal No. 32 of 1997 before the Learned District Court, Gadhinglaj. The Learned District Court by Judgment and Decree dated 01.10.2001 was pleased to dismiss the said Regular Civil Appeal No.32 of 1997.

4. The Appellants being aggrieved and dissatisfied by the Judgment and Decree dated 01.10.2001 passed by the Additional District Judge, Gadhinglaj in Regular Civil Appeal No.32 of 1997 confirming the Judgment and Decree dated 28.02.1997 passed by the Civil Judge (Junior Division), Ajra in Regular Civil Suit No.11 of 1993, preferred Second Appeal No.12 of 2002, which was admitted on 17.01.2002, and remains pending.

5. During the pendency of the Second Appeal, the Appellants No1 a to 1c, Appellant No.2 and Respondent No. 1a to 1c have decided to amicable resolve disputes among themselves and have arrived on the following consents terms which are as under :

a. It is hereby declare that Appellants Nos. 1a to 1c, Appellant No.2 and Respondent No.1 a to 1c are having half share (50% for Appellant No. 1a to 1c and Appellant No.2 and balance/ remaining 50%

for Respondent No.1a to 1c) in Revision Survey No.22/8 (New Gut No.96), Revision Survey Nos.18/2 (New Gut No.21) and Revision Survey Nos.26/3 (New Gut No.104).

b. The partition of New Gut No. 96, New Gut No. 21, and New Gut No.104 be effected by metes and bounds through the collectors or any subordinates officer under its directions.

c. The Appellants Nos. 1a to 1c and Appellant No. 2 agree that they have no share of whatsoever nature in house property bearing Gram Panchayat Properties Nos.19 (house property) and Gram Panchayat Properties Nos. 62, (open space) situated at Village Ette, Taluka Ajra, District Kolhapur and the Appellant nos. 1a to 1c and Appellant Nos. 2 shall handover peaceful possession of the Gram Panchayat Properties Nos.19 (house property) and Gram Panchayat Properties Nos. 62, (open space) situated at Village Ette (Devulwadi), Taluka Ajra, District Kolhapur to the Respondent No. 1a to 1c, within eight weeks from signing of the aforesaid consent terms.

d. Both parties agree that these terms fully resolve all disputes regarding the said Suit Property, with no further claims between them.

e. Both the Appellants and the Respondents agree that with this arrangement amongst themselves, the entire controversy between the parties gets resolved and there would be no claims amongst themselves with respect to the said Suit Property.

f. In view of the present Consent Terms arrived at between the parties, the Judgment and Decree dated 28.02.1997 passed by the Civil Judge (Junior Division), Ajra in Regular Civil Suit No.11 of 1993 as confirmed by Additional District Judge, Gadhinglaj in Regular Civil Appeal No.32 of 1997

by its Judgment and Decree dated 01.10.2001 stand modified in terms of the above Consent Terms.

g. All pending civil applications or interim applications, if any, shall stand disposed of in view of these terms.

h. In so far as the Respondent Nos. 2 and 3, who were the original Defendant Nos. 2 and 3 are formal parties to the suit, and there was no decree against them. In view thereof, their signatures or consent to the present consent terms are not required.

i. No order as to costs”.

8. Accordingly, the Second Appeal is disposed of in terms of the Consent Terms.

9. In view of the disposal of the Second Appeal, nothing survives in the Interim Applications / Civil Applications, if any, and the same are also disposed of.

[MADHAV J. JAMDAR, J.]

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