

साधा/तातडीचा : दिवाणी/फौजदारी
अर्ज कमांक : 1707. /2022
प्रकरण कमांक : CA-13/20
निशाणी कमांक : हंपर नि-1
एकूण पाने : 7 x 4 रुपये
एकूण खर्च : 28/- रुपये

सदरहू नक्कल अर्जदार

श्री. A. P. Panty

यांना दिली.

10 MAY 2022

अमिलेखपाल,
जिल्हा न्यायालय, पुणे

नकलेचा अर्ज आला तारीख 22/4 /2022

तारीख व्यावसि माहे रजिल

दोन हजार बावीस

अर्जाची पूर्तता झाली तारीख 28/4 /2022

अमिलेखपाल

नक्कल मिळण्याची तारीख 27/4 /2022

नक्कल तयार तारीख 05 / 05 /2022

तारीख पाच माहे मे

दोन हजार बावीस

अमिलेखपाल
जिल्हा न्यायालय पुणे

1707/22

Shri/Smt

F B Kothavale

Advocate for Appellant

V/s

Shri/Smt

Advocate for Respondent

Bor

Misc. Civil Appeal No. / C.R.A.

13 /2020

CNR No : -

Necessary Papers are accompanied

The appeal is in time.

The appellant is resident of Republic of India

Court fee stamp of Rs. is correct.

Parties to be entered in the register of Appeal

Date : 3 / 1 /2020

Asstt. Supdt.,
District Court, Pune

Registrar,
District Court, Pune

Assignment to the District Judge / Adhoc District Judge -
for disposal according to Law

,Pune

Date : 3 / 1 /2020

District Judge, Pune

STPALS

No. 115
Cor. Dist. Judge, Pune
Date 02 JAN 2020

दाखल दिनांक 18 MAR 2014

अधिक्षक (तांत्रिक विभाग)
जिल्हा न्यायालय, पुणे

In The Court of Hon'ble District Judge, Pune at Pune

CC 4 to CA

Civil Appeal No. 13/2020/2014

13/2020

CMS-MHPU01-000115-2020

अधिक्षक (तांत्रिक विभाग)
जिल्हा व सत्र न्यायालय, पुणे

1) Shri. Bhausaheb Genuji Waghere

Age : about 69 years, Occ : Agri,

2) Shri. Sudhir Genuji Waghere

Age : about 64 years, Occ : Agri,

Both are R/at : Pimpri - Waghere,

In front of Tapovan Temple, Pune - 411 017.

Through their Power of Attorney holder

Shri. Anil Shamdas Aswani

Age : about 39 years, Occ : Agri and Business,

R/at : H.B.-1/8, Pimpri,

Pune - 411 017.

दाखल दिनांक 02 JAN 2020

अधिक्षक (तांत्रिक विभाग)
जिल्हा व सत्र न्यायालय, पुणे

Appellants

(Ori. Defendants No.1 and 2)

V/s.

1) Smt. Shalan Balasaheb Waghere

Age : about 58 years, Occ : Household

2) Sou. Vaishali Sanjay Awhale

Age : about 36 years, Occ : Household

3) Miss. Sarika Balasaheb Waghere

Age : about 32 years, Occ : Household

All R/at : Pimpri Waghere, Waghere Wada,

Waghere Ali, Pimpri, Pune - 411 017.

4) Genbhau Haribhau Waghere (deceased)

through his legal heirs -

A) Smt. Chandrabhaga Shankar Sathe

Age : Adult, Occ : Household

R/at : Pimpri Nilakh,

Tal. Haveli, Dist. Pune.

B) Sou. Parvati @ T. Subai Sabir Rhondve

Age : Adult, Occ : Household

R/at : 328, Guruwar Leth,

Adv. fss
revenue to MHP.
Cell R. and N

HHP

08.08.20
08/01/2020

Near Mutton Market, Pune- 411 002.

C) Sou. Seetabai @ Chandrabhaga Dashrath Shinde

Age : Adult, Occ : Household,

R/at : Sangamwadi, Pune -411 003.

D) Sou. Shantabai Bhagwanta Parande

Age : Adult, Occ : Household

R/at : Dhanore, Tal. Haveli, Dist. Pune.

E) Sou. Subhadrabai Mahadu Kaspate

Age : Adult, Occ : Household

R/at : Wakad, Tal. Mulshi, Dist. Pune.

F) Rajani Kailas Satav

Age : Adult, Occ : Household

R/at : Wagholi, Tal. Haveli, Dist. Pune.

..... Respondents

(No. 1 to 3 ori. Plaintiffs while No. 4A to 4F
ori. Defendants 1A to 1F)

Appeal under Order 41 Rule 1 of Civil
Procedure Code.

The Appellants above named most respectfully submit as under :

- 1) The Respondents No. 1 to 3 filed initially Special Civil Suit No. 763/1991 on 21.06.1991 in the Court of Civil Judge Senior Division, Pune for declaration, injunction, partition and possession of the suit properties as mentioned in para 1(A) to 1(E) of village Pimpri - Waghere, Tal. Haveli, Dist. Pune. Subsequently, the suit was transferred to the Civil Judge, Junior Division, Pimpri on valuation ground and it was given new number as RCS No. 402/2000. After transfer of the suit no notice was served either by the Court or the Plaintiff to the Appellants. The Respondent No. 1 to 3 after transfer of the suit had included the suit properties S. No. 149/1A, 150/2/1 and 150/2/2 as per the order passed by the Trial Court on Exh. 74 on 04.09.2012 without giving any opportunity to the Appellants.

The Learned Lower Court did not consider as to whether the notices had been served upon the Appellants after transfer of the suit and decreed the suit ex-parte on 02.05.2013. The Appellants are under

impression that the suit only in respect of the other properties, excluding above three properties.

- 2) It is submitted that the above three properties where self acquired properties of the Appellants and the Respondent No.1 to 3 had no concern whatsoever with the said properties. The Appellants have sold out the above properties to M/s. Aum Developers by registered sale deed in the year 2009. Therefore, these properties were not remained with the Appellants in the year 2012, when the Respondent No. 1 to 3 had amended the plaint and thereby included these properties in the suit. As stated above the Appellants had not given the opportunity after the transfer of suit and therefore they could not able to put this fact before the Trial court. The decree in respect of these properties is absolutely null and void and required to be set aside.

Being aggrieved and dissatisfied with judgment, order and decree passed by the Joint Civil Judge, Junior Division, Pimpri in RCS No. 402/2001 on 02.05.2013 the Appellants prefer this appeal for the following amongst many other grounds.

- a) The law, facts and circumstances of the case are not properly followed and considered by the Learned Lower Court.
- b) There is substantial defect in the judgment and order by which the injustice is caused to the Appellants.
- c) The Learned Lower Court has committed the serious mistake in considering that the Appellants were absent since the date of transfer of the suit.
- d) The Learned Lower Court has failed to issue the notice to the Appellants after the transfer of the case from the Civil Judge Senior Division, Pune on valuation grounds.
- e) The Learned Lower Court has committed the mistake by relying on the false statements made by the Respondents No. 1 to 3.

- f) The properties which are subsequently added in the suit have already been disposed of at the time of the amendment, sought in the plaint by the Plaintiffs.
- g) The Appellants have not given any opportunity to put up the real facts in respect of the properties which are subsequently added in the plaint. It is submitted that these properties are the self acquired properties of the Appellants and therefore these can not be subject matter of the suit.
- h) The Learned Lower Court has solely depended upon the evidence lead by the Respondent No. 1 to 3 and ignored the real facts of the case.
- i) The observations and findings of the Learned Lower Court on the issues are on flimsily grounds and those are against the provisions of law.
- j) The Learned Lower Court has committed the mistake in holding that the properties which were subsequently added in the plaint are the joint family properties.
- k) It is wrong on the part of the Learned Lower Court to consider that the Plaintiff are having 10/36 share in the suit properties.
- l) It is also wrong on the part of the Learned Lower Court, to hold that the transaction made by the Defendants on the basis of the General Power of Attorney and Defendant No. 1 & 3 executed in favour of the Defendant No. 2 is fraudulently and therefore the transaction made by the Defendants are not binding on the so-called share of the Plaintiff.
- m) The Learned Lower Court had failed to consider the evidence on record in judicious manner.
- n) The Plaintiffs have not given the sufficient and correct evidence in respect of the transaction made by Defendants to various persons, on the basis of the Plaintiffs have failed to give the necessary details of the said transaction and evidence accordingly.

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- o) The Learned Lower Court has committed the mistake by passing the judgment and order in respect of this transaction and thereby ignore the evidence.
 - p) The Learned Lower Court has blindly depended on the verbal statement made by the Plaintiffs in respect of the transaction without any document and the evidence thereof.
 - q) The judgment, order and decree passed by the Learned Lower Court is against the principle of natural justice, equity and good conscience.
 - 3) The appeal is valued as per the valuation of the suit and court fee is aid accordingly.
 - 4) The addresses of the Appellants and the Respondents are the same as given in the title of the appeal, for service of the process.
 - 5) **It is therefore prayed that :**
 - a) The judgment order and decree passed by Joint Civil Judge, Junior Division, Pimpri in RCS No. 402/2000 on 02.05.2013 be set aside and
 - b) Appeal is allowed and
 - c) Other just and equitable releifs in the interest of justice be passed in favour of the Appellants.

Pune.

Date: 18/3/2014


Appellant through their
Power of Attorney holder


Advocate for Appellants

VERIFICATION

I, **Shri. Anil Shamdas Aswani** Age : about 39 years, Occ : Agri and Business, R/at : H.B.-1/8, Pimpri, Pune - 411 017., Power of Attorney holder of **Shri. Bhausaheb Genuji Waghere** Age : about 69 years, Occ : Agri, and **Shri. Sudhir Genuji Waghere** Age : about 64 years, Occ : Agri, Both are R/at : Pimpri - Waghere, In front of Tapovan Temple, Pune - 411 017., do hereby solemnly state and affirmation that the contents hereinabove written are true and correct to the best of my knowledge, belief and information and have signed at Pune on this day of 2014.

Appellant through their
Power of Attorney holder

मेरॉक्स करणार
रुजू पाहाणार



सत्यप्रत

प्रबंधक
जिल्हा न्यायालय, पुणे

05 MAY 2022