

**Regular Civil Suit No. 88 of 2017**  
**Dattatray Vs. Mangal & ors.**

**Order Below Exhibit 64**  
**(Passed on 23<sup>rd</sup> November, 2022)**

This is an application filed by defendant No.1 for deletion of Issue No.1-A.

2. It has been contended by defendant No. 1 that this Court was pleased to frame Issue No. 1-A after appearance of defendant No.2 & 3 in the suit and on the basis of written statement filed by them. Said issue is in respect of ownership of defendant No.2 & 3 over the suit property by virtue of "Will". However, said deendants have already filed probate application No. 21/2021 in respect of the said "Will" before the Hon'ble Civil Judge Senior Division, Satara. Said application is still pending. Therefore, said issue can not be determined in the present suit unless and until the final decision of said probate application. Defendant No.2 & 3 intentionally suppressed this fact. In such circumstances, said issue is unnecessary and therefore it be deleted.

3. The plaintiff filed his say to the present application vide Exh.66. He submitted that the present application has been filed by defendant No.1 only to prolong the matter. In fact, the present suit is filed by him for possession from Maruti Garde. Now, he is dead and after that, the defendant is in possession of the suit property. Ultimately, he prayed to pass order on the present application, as quick as possible.

4. Defendant No.2 and 3 failed to file their reply, even after availing sufficient opportunity.

5. Heard Ld. Advocate Mr. U.H. Sanas for the defendant No.1 and Learned Advocate Mr. S.B. Chavan for the plaintiff. Though defendant No.2 & 3 failed to file their say to the present application, Learned Advocate Mr. A.K. Shinde appearing for them argued the application.

6. Learned Advocate Mr. Sanas argued that the issue of title of suit property has already been decided in Regular Civil Appeal No.132/2011, which was filed by the present plaintiff against deceased Maruti, being aggrieved by the judgment and decree in RCS No. 363/2006. As per the said judgment in appeal, the original judgment was partly set aside and the prayer of ownership by deceased Maruti was dismissed. However, it was ordered that defendant No.1 to 3 were restrained from dispossessing the plaintiff (Maruti) from the suit property. In that suit, present plaintiff Dattatray was defendant. Therefore, the Issue No.1-A has to be deleted.

7. Learned Advocate Mr. Chavan submitted that the Court has rightly framed the issues and they are required to be properly adjudicated during trial. Already the evidence has been led by the parties. Therefore, the present application be rejected.

8. Learned Advocate Mr. Shinde also submitted that after their entry in the present suit Issue No.1-A has been framed by the

Court and they have adduced their evidence to prove it. As per the said issue, defendant No.2 & 3 have to prove their ownership and title over the suit property. Therefore, the present application be rejected with costs.

9. Perused the record. It appears that this Court framed Issues at Exh.17. Thereafter, on impleadment of defendant No.2 & 3 in the suit and filing of their written statement, the issues were amended and new issue No.1-A was framed as under -

“Do defendants No.2 & 3 prove that they have become owners and possessors of suit property on the basis of a Will Deed dtd. 16.05.2018 ?”

10. Thus, the burden to prove their ownership and title over the suit property was on defendant No.2 & 3. After the framing of said issue, they adduced their evidence and examined three witnesses, till date. They have also produced the original “Will” on record and examined an attesting witness to prove its execution as well as contents. Said “Will” has been exhibited as Exh.No.57 during the said evidence.

11. The present suit is for simplicitor possession. Earlier, it was filed against deceased Maruti. Thereafter, on his death his natural legal heir i.e. his daughter Mangal (defendant No.1) has been brought on record. Thereafter, the defendant No.2 & 3 moved application for their impleadment as a party to the suit on the basis of “Will” allegedly executed by deceased Maruti. As they were

claiming to be in possession of the suit property by virtue of that “Will” said Issue No.1-A came to be framed.

12. Now, as argued by Learned Advocate Mr. Sanas regarding the decision of Regular Civil Appeal No.132/2011, I find some substance in his submission. I perused the original decree in Regular Civil Suit No. 363/2006, which was passed on 16/03/2011 by the then 2<sup>nd</sup> Jt. Civil Judge Jr. Dn. Wai. As per the said decree, deceased Maruti was declared to be owner of the suit property and even it was held that he was in possession of the same. Being aggrieved by the said decree, the present plaintiff Dattatray and his two brothers namely Suresh Ramchandra Kudale and Ramesh Ramchandra Kudale filed Regular Civil Appeal No. 132/2011 before the Hon'ble Principal District Judge, Satara. In the said appeal, the judgment of trial Court was partly set aside and the prayer of deceased Maruti regarding his title and ownership over the suit property was dismissed. However, he was held to be in possession of the same and therefore, the present plaintiff and his two brothers were restrained from dispossessing deceased Maruti.

13. It is further submitted by Mr. Sanas that there is no second appeal against the judgment and decree of the First Appellate Court. Interestingly, the plaintiff and defendant No.2 & 3 also did not make any statement in that regard. Therefore, it appears that said judgment and decree in RCA No. 132/2011 is final. Therefore, on the basis of said verdict, it can be said that the issue of ownership of deceased Maruti over the suit property has been decided and got finality.

14. Now, defendant No.2 & 3 are claiming that they are in possession of the suit property, at present. Therefore, in view of the above discussion, said Issue No.1-A is required to be altered to that effect. In the result, present application is being disposed of by passing following order.

**ORDER**

1. Issue No.1-A below Exh.17 is being altered as -

“Do defendant Nos.2 & 3 prove their possession over the suit property on the basis of “Will Deed” dtd. 16.05.2008 ?”

2. Accordingly, the application (Exh.64) is disposed of.

3. Cost in main cause.

*Dictated & pronounced in open Court.*

Wai.

Date : 23.11.2022.

(R.M. Bhende)  
Jt. Civil Judge Junior Division,  
Wai, District Satara.

**CERTIFICATE**

“ I certify that this Order uploaded is a true and correct copy of original signed Order”.

Order dictated on : 23.11.2022.

Order checked and signed on : 23.11.2022.

Uploaded by : S. S. Kumbhar.

Stenographer (Grade-III)

Uploaded on : 29.11.2022.