



RD No.04/2004
Uttamrao Vs..Sahebrao

ORDER BELOW EXH. 208 and 217

01. The application at Exh.208 for permission to compromise is filed by applicants/ D.H. Suresh Uttamrao Babar & other and non-applicants/ J.D. Shamrao Shankarao Babar and his son Santosh Shamrao Babar.

02. It is averred in application that, J.D. Taramati, Mainabai, Harinarayan, Kundalikrao @ Bhimrao, Vishnu, Sarswati and Shamrao have in possession of suit land and house property from begining. Taramati, Sarswati died. Landed property survey no. 64 ad-measuring 12 h. 48 R is a undivided family property and land 2 H.15 R. in this survey number was on the name of Shamrao babar but thereafter, it is transferred/alloted to the name of Santosh as per revenue record. It is in their possession. (The boundaries are mentioned in the application). The suresh uttamrao babar and other are the legal hairs of original D.H. Uttamrao Shankarrao Babar and they have not adequate land for their livelihood. Therefore, the Shamrao and santosh has voluntarily hand over said land in possession for cultivation to said LR's of Uttamrao till effecting partition of land in this execution proceeding. The memo of compromise is filed on record.

03. As per Exh. 218 Bhimrao and Vishnu i.e. JD 2 & 7 resisted the permission to compromise application. They denied all the averment in application and contented that, the land 0 H. 02 R. in Survey no. 64 was/is never in possession shamrao and santosh. Actually land in Survey no. 64 is in possession of JD. 2 & 7. that i.e. Bhimrao and Vishnu. By taking disadvantage of entries in revenue record this application has been filed and trying to obstruct to the possession of JD 2 & 7. the possession receipt which is prepared between JD no. 3 Shamrao, his son Santosh and LR's of late Utthamrao I.e. Suresh, Dhondiram. Ratan, Bhagwan, Satish and Sheela (DH) in respect of land 2 H.15 R. in survey no. 64 and land 2 H. 97 R. in Survey no. 99 is false and bogus. The compromise between them is never arrived. Santosh Babar is not a party to the matter. Therefore, they have no right compromise.

04. As per pursis at Exh. 217 the JD no.3 Shamrao informed that, the land 2 H. 15 R. in survey no. 64 which is on the name of Santosh and the land 2 H. 97 R. in survey no. 97 which is their possession have been delivered to LR's of his late brother Uttamrao for their livelihood on 10/06/2021 and 27/06/2021.

05 Considering the contents in pursis say of other parties

called out. Behalf of JD No. 2 and 7 say is filed on overleaf of application and opposed to pursis on ground that, the compromise is not tenable and libel to rejected.

06. Read application and pursis as well as say there on. Heard. It is submitted by learned advocate Shri. S.D. Deshmukh of DH and Advocate Shri. Shete of JD no. 3 that, the LR's of Utthamrao have no means of livelihood therefore till disposal of present executing proceeding land in survey no. 64 and 99 has been handed over to them by JD no. 3 Shamrao and his Son Santosh. Per contra, learned advocate for JD no. 2 Smt. Bharad submitted that the compromise is not tenable and entertain being a partial compromise. It cannot be permitted.

07. It is also reveals on record that, the present execution proceeding has been filed by original defendant no. 2 namely Uttamrao (D.H.) against original plaintiffs and other defendants, (JD No. 1 to 8.) during the pendancy of proceeding the DH Utthamrao died and his LR's namely Suresh, Dhondu, Ratan, Bhagwan, Satish and Shila are brought on record. The JD Nayabarao (Who was original plaintiff) also died and his LR's i.e. Anjali, Gajanan, Rajani and Manjusha have been taken on record. It is also seen that, the JD No. 4 and 5 Taramati and Sarswati (Who was original defendant No. 5 and 6) also died.

08. Before proceed further, it is proper to look into record for gather the journey of proceeding. Initially, the suit bearing RCS No. 53/1999 was instituted claiming relief of partition and separate possession by One Nayabrao against his brothers and sisters namely sahebrao, uttam, bhimrao, shamrao, taramati, sarswatibai, sanubai and son of bhimrao namely Vishnu. It got partly decreed on 11/11/2003 against in all eight defendants.

09. The present DH namely Uttamrao was in fact the original defendant no.02 in RCS No.53/1999, wherein he had filed consenting written statement. Being aggrieved, other defendants i.e. Judgment debtors preferred appeal before the Hon'ble District court vide R.C.A. No. 207/2003 and before the Hon'ble High Court of Bombay vide second appeal no 238/2005. Both the Hon'ble appellate courts confirmed the judgment of trial court.

10. The DH i.e. Uttamrao has filed the present execution proceeding i.e. R.D.04/2004. The record reveals that, this court had send the decree to the collector for effecting partition of the landed property under section 54 of CPC. The Tahsildar, Risod filed his report vide Exh.128 and informed the court that there is difference in the area referred to in the decree and the area as per revenue records so far as survey no. 60/1, 7/2, 147, 102/2 and 117/1 are concerned. It is further informed that, in above survey number, persons other then parties to this execution proceeding are also in possession of their lands. The revenue authorities thereby sought the correction of area and order regarding in other person in possession for effecting

partition.

11. Meanwhile, the DH had filed M.J.C. bearing no.10/2010 seeking to amend the plaint and decree u/s. 152 r/w 151 of C.P.C. it was rejected. Being aggrieved, the DH had filed Civil Writ Petition bearing no. 317/2012 before the Hon'ble High Court and it was dismissed.

12. Thereafter, the DH filed an application below Exh.92 for area of the suit land survey nos. 60/1, 7/2, 147, 102/2 and 117/1 as stated in decree and precept be corrected as per measurement sheets, revenue record and report of concern Talathi dated 6/2/10 below Exh. 72.or in the alternatively area of the suit lands survey nos. 60/1, 7/2, 147, 102/2 and 117/1 may be ascertained in view of the report of the concern Talathi dated 6/2/2010 below Exh.72 and be corrected identical with revenue record. Said application partly allowed and ordered that the applicant is allow to correct the exact area of the suit property only after its ascertainment to the satisfaction of the court and For ascertaining the exact area of the suit property and the persons on whom the decree is binding the applicant is directed to produce necessary documents and matter is pending at this stage.

13. Order 23 Rule 3 of CPC provides for compromise for the suit between the parties to the suit. The parties to the compromise shall prove to the satisfaction of the Court that the suit has been adjusted wholly or in part in writing and signed by the parties and

the Court shall record satisfaction with regard to the compromise of the subject matter of the suit.

14. The original suit bearing no. 53/1999 is partly decreed and it is ordered that, Suit for partition in respect of movable property as mentioned in para 2(c) of the plaint is rejected. Plaintiff Naibrao, defendant no. 1 Sahebrao defendant no. 2 Uttam and defendant no.4 Shamrao shall have 9/48 the share each in the suit property as described in para 2 (A) & (B) of the plaint. Similarly, defendant No.3 Bhimrao and defendant No. 8 Vishnu shall have 9/48th share jointly i.e. 9/96 share each in the suit property as described in para no. 2(A) and (B) of the plaint. The defendant 5 Taramati, defendant No. 6 Sawaraswatibai and defendant no. 7 Sarubai shall have 1/48th share each in the suit property as described in para 2(A) & (B) of the plaint.

15. The present proceeding is filed for execution of order in bearing no. 53/99. It is fact on record that, the decreetal property is joint undivided family property and preliminary decree has been passed and matter is pending for execution. The undivided properties /decreetal properties yet be partitioned. The DH and JD have right over the undivided family property till final decree.It is also appeared that, the compromise is arrived between LR's of Utthamrao (DH) and JD no.3 Shamrao and his son Santosh, the other JD or parties and properties to the proceeding has been excluded from compromise.

16. The object of compromise is to put an end to the

litigation of the parties but in present situation, after so called compromise the litigation does not put an end. It is going to continue. in present circumstances Permitting compromise is a futile exercise. The partial compromise is not permissible in the fact of present case. If it is accepted or permitted it would be prejudice the case and it affect the rights of other parties. In the result, I have passed following order.

ORDER

01. Application at Exh- 208 for permission to compromise hereby rejected.
02. The pursis at Exh-217 is not accepted.
03. The parties bear their respective costs.

Sd/-

Date: 02.05.2022

(S. N. Gavali)
Jt. Civil Judge (J.D.), Risod

CERTIFICATE

I affirm that the contents of this P.D.F. File Order/Judgment are same word to word, as per the original **Order**.

Name of the Stenographer : **Rohan S. Koshti (L.G.)**

Name of court : **Jt.C.J.J.D.& JMFC, Risod.**

Date : **02.05.2022**

Order signed by the
Presiding Officer : **02.05.2022**

Order uploaded on : **05.05.2022**