

Dharma Soma Tare vs Harischandra Gangaram Tare on 9 January, 2020

Bench: A.M. Khanwilkar, Dinesh Maheshwari

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1101 OF 2011

DHARMA SOMA TARE & ORS.

Appellant(s)

VERSUS

HARISCHANDRA GANGARAM TARE

Respondent(s)

O R D E R

The parties have filed a joint application for disposing of Civil Appeal No. 1101 of 2011 on the basis of consent terms recorded between the parties as noted in paragraph 6 of the application. The same read thus:

“6. The Petitioner and Respondent have amicably settled all disputes and difference amongst them with regard to the suit lands on following consent terms:-

(i) It is agreed between the parties that the subject land belonging to the Petitioners shall be divided and shared between the Petitioners and Respondent as hereinafter provided.

(ii) It is agreed between the parties that they shall not be entitled to receive any consideration from each other in monetary terms; no money shall change hands pursuant to the settlement arrived between the parties as recorded in these consent terms.

(iii) It is agreed between the Parties that out of the total land area admeasuring 6860 sq. mtrs. in Survey No. 13, Hissa No. 01 (4460 sq. mtr) and Survey No. 17, Hissa No. 12 (2400 Sq. mtr) at Village Wadavli, Tal- Kalyan, Dist – Thane, Maharashtra, the Petitioners shall continue to own, hold and possess a total area admeasuring 3860 Sq. mtrs being an area of 2856.10 Sq. mtrs out of Survey No. 13, Hissa No. 01 and an area of 1003.90 Sq. mtrs out of Survey No. 17, Hissa No. 12.

12:18:12 IST Reason:

(iv) The Respondent accepts, agrees and consents that the Petitioners herein are the owners of entire suit properties being Survey No. 13, Hissa No. 01 (4460 sq. mtr) and Survey No. 17, Hissa No. 12 admeasuring 2400 Sq.

mtr. including Pot Kharab, both situated at Village Wadavli, Tal- Kalyan, Dist – Thane. However, in consideration of the Respondent accepting the ownership of the suit properties of the Petitioners and agreeing to the present consent terms, the Petitioners herein agree and hereby undertake to convey and transfer a part of the suit property to the Respondent being an area admeasuring 1603.90 Sq. mtrs from out of Survey No. 13 Hissa No. 1 and area admeasuring 1396.10 Sq. Mtrs from out of Survey No. 17, Hissa No. 12 aggregating to 3000 Sq. mtrs of land situated at Village Wadavli, Tal-Kalyan, Dist – Thane.

(v) The exact portion of the suit property which is to be retained by the Petitioners herein in their possession and which is agreed to be conveyed to the Respondent by the Petitioners herein is shown in a map setting out the division of the suit property/lands between the parties, which is annexed herewith and marked as ANNEXURE-D. The Plot No.2 marked in yellow colour in the said map, is agreed and undertaken to be conveyed by the Petitioners to the Respondent herein. Both parties respectfully pray that a consent decreed be passed by the Hon'ble Court and the map aforesaid be made a part of the decree.

(vi) The Respondent on its part agreed and undertakes that the remaining area of the suit property admeasuring a total area of 3860 sq. mtrs comprised of area admeasuring 1003.90 sq. mtrs out of Survey No. 17, Hissa No. 12 and admeasuring 2856.10 sq. mtrs out of Survey No. 13, Hissa No.1, shall be in possession, occupation and use of the Petitioners and the Respondent shall not have or claim any right in respect of the said portion. The Portion which is retained by the Petitioners as described herein above is shown in bright green colour and described as Plot No.1 in the annexed map (Annexure- D).

(vii) It is agreed by the Respondent that the following judgments and orders shall be set aside by the Hon'ble Supreme Court while disposing of the present petition and that the respondent unequivocally, unconditionally and without reservation, consents to the same:-

(1) Final judgment, order and decree dated 04.04.1987, passed in Regular Civil Suit No. 535/1982 by the Court of Civil Judge, Junior Division, Kalyan, District Thane in case entitled "Shri Dharma Soma Tare and Ors. Vs. Shri Harishchandra Gangaram Tare".

(2) Order dated 31.03.1992 passed by the Court of Vth Additional District Judge, Thane in Civil Appeal No. 185/1987 in case entitled "Shri Dharma Soma Tare and Ors. Vs. Shri Harishchandra Gangaram Tare". (3) Order dated 11.09.2009 passed by the Hon'ble High Court, Bombay in Second Appeal No. 615/1992 in case entitled "Shri Dharma Soma Tare and Ors. Vs. Shri Harishchandra Gangaram Tare".

(viii) Without prejudice to the above, final judgment, order and decree dated 04.04.1987 passed in Regular Civil Suit No. 535/1982 by the Court of Civil Judge, Junior Division, Kalyan, Dist – Thane in case entitled “Shri Dharma Soma Tare and Ors. Vs. Shri Harishchandra Gangaram Tare” shall be deemed to be fully satisfied and shall not be executed by the Respondent against the Petitioners.

(ix) The Petitioners are aware that in contemplation of these consent terms the Respondent has entered into a preliminary agreement for development of the portion admeasuring 3000 sq. mtrs of their share at Plot No. 2 in the map annexed herewith with M/s Shri Kalki Enterprises, the developer and builder having their office at Kalyan, on 08.06.2018 and the Petitioners do not have any objection whatsoever with respect thereto.

(x) The parties hereto agree that they shall have complete liberty and freedom to use their respective share of the land, without any interference from each other and shall be free to develop and transfer their land in any manner deemed fit by them.

(xi) The parties shall bear their own costs of this petition.

(xii) It is further agreed that the map annexed hereto shall be deemed to be part of the present consent terms. “The map appended to the application as Annexure-D also forms part of the consent terms. The assurance given by the parties in the abovequoted consent terms is accepted.

The appeal is disposed of on the basis of the consent terms. No order as to costs.

Pending applications, if any, stand disposed of.

.....J (A.M. KHANWILKAR)J (DINESH MAHESHWARI) New Delhi
January 09, 2020 ITEM NO.2 COURT NO.6 SECTION IX S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS Civil Appeal No(s). 1101/2011 DHARMA SOMA TARE & ORS.
Appellant(s) VERSUS HARISCHANDRA GANGARAM TARE Respondent(s) (IA No. 180064/2019 -
FORMAL DISPOSAL) Date : 09-01-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR HON'BLE MR. JUSTICE DINESH
MAHESHWARI For Appellant(s) Mr. Vivek Sharma, Adv.

Ms. Mamta Gautam Sharma, Adv.

Mr. Vineet Sawney, Adv.

M/S. Karanjawala & Co., AOR For Respondent(s) Mr. Jasmine Damkewala, Adv.

Ms. Vaishali Sharma, Adv.

Ms. Abha R. Sharma, AOR UPON hearing the counsel the Court made the following
O R D E R The Civil Appeal is disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]