
(2019) 12 GUJ CK 0036
In the Gujarat High Court

Case No : R/First Appeal No.1828 Of 2010, R/First Appeal No. 1829 Of 2010

Devang Madhukar Mehta & 1 Others	APPELLANT
Vs	
Pankaj Madhukar Mehta & 1 Others	RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96

Citation : (2019) 12 GUJ CK 0036

Hon'ble Judges : A.J. Desai, J

Bench : Single Bench

Advocate : HR Prajapati, Ajay S Jagirdar

Final Decision : Disposed Of

Judgement

A. J.Desai, J

1. By way of the present appeals under Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the common judgment and decree dated 14.5.2010 passed by the learned City Civil Court No.22, Ahmedabad in Civil Suit No.571 of 2008 and Civil Suit No.499 of 2006 by which the suit i.e. Civil Suit No.499 of 2006 filed by the appellants of First Appeal No.1828 of 2010 came to be dismissed and the suit i.e. Civil Suit No.571 of 2008 filed by respondents of First Appeal No.1828 of 2010 came to be allowed.

2. The appeals came to be admitted vide oral order dated 13.8.2010 and by way of interim relief, stay against operation, implementation and execution of the impugned judgment and award was granted.

3. Today when the appeals are called out, Mr. H.R. Prajapati, learned advocate appearing for the appellants would submit that during the pendency of the appeals, appellant No.2 - Bipin Madhukar Mehta passed away without having any heirs and hence, the appellant No.2 may be ordered to be deleted from the cause title of the present appeals.

4. Similarly, Mr. Ajay S. Jagirdar, learned advocate appearing for the opponents would submit that the opponent No.2 i.e. Rajnikant Madhukar Mehta also passed away yesterday i.e. 18.12.2019, without having any heirs and hence, the opponent No.2 may be ordered to be deleted from the cause title of the present appeals

5. In view of the above, Registry is directed to delete appellant No.2 - Bipin Madhukar Mehta as well as opponent No.2 i.e. Rajnikant Madhukar Mehta from the cause title of the present appeals.

6. Today, both the learned advocates have presented a consent terms dated 19.12.2019 duly signed by the appellant No.1 and opponent No.1 and their signatures in the consent terms have been identified by their respective advocates. The same is taken on record. Mr. Prajapati, learned advocate appearing for the appellant would submit that the appellant No.1 - Devang Madhukar Mehta is present in the Court and the appellant No.1 has been identified by him. Similarly, respondent No.1 - Pankaj Madhukar Mehta is also present in the Court and he has been identified by his advocate Mr. Jagirdar.

7. The appellant No.1 as well as respondent No.1 who are present in the Court state that they are real brothers and sons of Madhukar Chandulal Mehta and except them, there are no other legal heirs of Madhukar Chandulal Mehta. They have also stated that settlement has been arrived at between them and hence, the appeals may be disposed of in terms of consent terms.

8. As per the consent terms, the appellant No.1 - Devang Madhukar Mehta who is in occupation of first floor of the suit property shall vacate the suit property on or before 12.3.2020. He further states that he has agreed to vacate the suit property since the opponent No.1 - Pankaj Madhukar Mehta has agreed to pay an amount of Rs.30 Lacs towards full and final settlement. The opponent No.1 has also produced on record xerox copy of Cheque No.117030 of Nutan Nagarik Sahakari Bank Limited, Maninagar Branch, Ahmedabad for an amount of Rs.17,50,000/- and Cheque No.199723 of Dena Bank, Pushpkunj, Ahmedabad of Rs.12,50,000/-. The opponent No.1 who is present in the Court states that the said cheques shall be submitted before the Registry of this Court and the Registry may be directed to encash the said cheques and after the appellant No.1 vacates the suit property and hand over the possession to opponent No.1, the appellant No.1 shall prefer an application to the Registry of this Court for withdrawal of the said amount to which the opponent No.1 has no objection and the said amount may be given to the appellant No.1 thereafter.

9. In view of the consent terms arrived at between the parties, the present appeals stand disposed of in view of consent terms. Following directions are issued :-

(i) The opponent No.1 - Pankaj Madhukar Mehta is permitted to submit Cheque No.117030 of Nutan Nagarik Sahakari Bank Limited, Maninagar Branch, Ahmedabad for an amount of Rs.17,50,000/- and Cheque No.199723 of Dena

Bank, Pushpkunj, Ahmedabad for an amount of Rs.12,50,000/- with the Registry of this Court. Upon submission of the said cheques, Registry is directed to encash the same immediately.

(ii) The opponent No.1 - Pankaj Madhukar Mehta shall file an undertaking with this Court within a period of one week from today to the effect that the cheques submitted by him with the Registry of this Court shall be honoured upon its presentation.

(iii) As and when the appellant No.1 vacates the suit property, he shall file an application to the Registry of this Court for disbursement of the amount of Rs.30 Lacs and at that time, the advocate for the opponent No.1 shall countersign the said application with the endorsement "No Objection". Upon submission of the said application, the Registry is hereby directed to disburse the amount deposited by the opponent No.1 to the appellant No.1 by A/c. Payee cheque, after proper verification.

(iv) Registry is hereby directed to hand over the original documents submitted by the concerned parties, upon application made by them.

(v) The parties to the proceedings are hereby directed to act as per the consent terms.

Decree be drawn accordingly as per consent terms.

There shall be no order as to costs.