

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

28 APEAL FROM ORDER NO. 78 OF 2013

WITH CA/643/2013 IN AO/78/2013

SHAIKH ABDUL RAHIM SHAIM MOHAMMAD AND ORS

VERSUS

SHARIFABI SAYYED RAJASAHAB AND ORS

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Advocate for Appellants : Mr. Joshi M. D.

**Advocate for Respondents 1 to 3: Mr. Syed Mustaq Ahmed
Rajasaheb**

Advocate for Respondent No.4 : Mr. V. S. Bedre

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CORAM : S. V. GANGAPURWALA, J.

DATE : 9th September, 2015

PER COURT :

1. Mr. Joshi, the learned counsel for the appellants strenuously contends that remand of the matter could not have been as a matter of course. There are various suits pending between parties before the lower court. According to the learned counsel, cause of action in the suit was only against the municipal corporation and no other party. The respondents could not claim to be impleaded as party as a matter of right. According to learned counsel, even ingredients of Rule 23, 23-A, Order 41 of the Civil Procedure Code are satisfied. Learned counsel further submits that the district court, while passing

the impugned order, has only gone on assumption without giving any finding on the rights of the third party.

2. I have considered the order.

3. The Appeal from Order being against the order of remand, has to be considered on substantial questions of law. The order impugned shows that the application filed by the present respondent under Order 1 Rule 10 was rejected by the trial Court. The application was filed seeking leave to appeal which is permissible. It has been observed that the dispute is about the construction in the municipal lane. The respondents are the neighbours who claim rights and access to the said municipal lane. It is their contention that because of the said constructions, the use of way is affected. The district court has considered the said aspect and has remitted the matter giving opportunity to the parties to lead evidence. The appellate court has not committed any error while passing the said order.

4. In the light of above, the appeal from order is

dismissed. No costs.

5. If any orders are passed by the trial Court pursuant to the remand of the matter, naturally, the present order would not come in way.

6. Averments made in para 15, 16, 32, 33 of the appeal memo before the appellate Court are not substantiated. They appear to be reckless allegations which is deprecated by this Court. In fact, if such conduct persists of the appellants of RCA No. 119/006 as is detailed in the said appeal memo in para 15, 16, 32 and 33, then the Court would be required to resort to further course of action against them.

(S. V. GANGAPURWALA, J.)

JPC