

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 66 OF 2012

Shashikalabai W/o Vilasrao Kasture .. Appellant

Versus

Sumanbai W/o Sudhakar Madne
and another .. Respondents

Shri P. R. Tandale, Advocate for the Appellant.

The Respondent No. 1 is served.

Shri R. R. Karpe, Advocate h/f Shri Sandeep S. Deshmukh,
Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA, J.

DATE : 30TH SEPTEMBER, 2015.

PER COURT :-

. Mr. Tandale, the learned counsel submit that, the lower Appellate Court has remanded the matter to the Trial Court and has reversed the wheel by more than 10 years. The learned counsel submits that, the Appellate Court observed that, the defendant No. 2, was negligent for prosecuting the matter, for 9 years did not file any appeal, still, at the behest of the defendant No. 2, remanded the matter. The learned counsel submits that, even no prayer was made in the appeal for remanding the matter back. The learned counsel submits that, the negligence on the part of defendant No. 2 though was considered by the Court, still

the matter was remanded back. The learned counsel submits that, observation in para 15 of the order passed by the Appellate Court was sufficient to dismiss the appeal itself instead of partly allowing the said appeal and remanding the matter back to the Trial Court.

2. Mr. Karpe, the learned counsel supports the order.

3. I have considered the judgment. The Appellate Court has observed the irregularities in conducting the suit. It has observed that, after the plaintiff had led her deposition the defendant No. 2 was added as a party. After the defendant No. 2 was added as a party, the issues were framed. However, plaintiff thereafter did not adduce any evidence. The defendant No. 2 filed an application for recall of plaintiff for cross-examination. The said application was allowed. Summons were issued to the plaintiff however, plaintiff did not appear for cross-examination. Repeatedly summons were issued. It is also observed by the Appellate Court that, on many dates the suit was kept for taking steps by defendant No. 2 against the witnesses. Then all of a sudden it was shown that, the suit is fixed for arguments and then judgment. No stage for adducing evidence by defendant No. 2 was fixed. The procedural irregularities were considered and the Court found that the retrial is necessary. The Court can exercise its jurisdiction for remanding the matter if the retrial is

found necessary as per Rule 23-A of the Order 41 of the Code of Civil Procedure.

4. No doubt the Court has also observed about the negligence of the defendant No. 2 and for that, the Appellate Court has imposed cost of Rs. 10,000/- on the defendant No. 2.

5. Considering the above no substantial question of law is made out. As such, the appeal from order is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15