

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

APPEAL FROM ORDER NO. 77 OF 2015

Baliram Vitthalrao Mindhar .. Appellant

Versus

1. Punjaram S/o Gamaji Sabale
and others .. Respondents

Shri Balbhim R. Kedar, Advocate for the Appellant.

Shri R. M. Deshmukh, Advocate for Respondent Nos. 1 to 4.

CORAM : S. V. GANGAPURWALA, J.

DATE : 23RD SEPTEMBER, 2015.

PER COURT :

. Mr. Kedar, the learned counsel for the appellant submits that, the lower Appellate Court has remanded the matter to the Trial Court only on the ground that the defendant failed to adduce evidence. According to the learned counsel the remand of the matter was not necessary. The defendants did not lead evidence inspite of ample opportunity being granted to them. The defendants were represented by an advocate. The learned counsel relies on the judgment of the Apex Court in a case of Municipal Corporation Hyderabad Vs. Sunder Singh reported in AIR 2008 SC 2579. According to the learned counsel, the suit was not decided on preliminary issue. The judgment and decree cannot be said to be ex-parte decree, as the defendants had

appeared in the suit and filed their written statement and had contested the suit. The learned counsel further submits that, an erring party cannot be allowed to take advantage of his own wrong. Deliberately the matter is protracted by the defendants.

2. Mr. Deshmukh, the learned counsel supports the judgment.

3. I have considered the submissions canvassed by the learned counsel for respective parties. It is fact that, the defendants did not adduce the evidence, in such a case the judgment and decree can be said to be an ex-parte as is held by the Apex Court in the case of **Prakash Chander Vs. Janki Manchanda** reported in ***AIR 1987 SC 42***.

4. The lower Appellate Court has observed about the conclusion of the Trial Court regarding the title i. e. there is no clear proof. The defendants did not adduce evidence. The advocate of defendants was dead. The Court has put forth the time frame. The remand of the matter is U/O 41 Rule 23-A of the Code of Civil Procedure, wherein even plaintiff would be having opportunity to adduce further evidence. The Appellate Court itself had directed the Trial Court to dispose of the proceedings within stipulated period.

5. The Appellate Court has exercised the discretion in

plausible manner. No substantial question of law arises. As such appeal from order stands disposed of. No costs.

6. The Trial Court shall endeavour to dispose of the suit within a period of six (6) months from today.

7. Whatever entries are made subsequent to the earlier judgment of the Trial Court, the same shall be maintained, however, the same would be subject to final decision in the suit.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15