

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 10 OF 2014

Mr. Kashinath Sadashiv Balwad (Died)
through L.Rs.

Kashinath S/o Sadashiv Balwad (Died)
through L.Rs.

1. Smt. Kalawati Kashinath Balwad,
Age : Major, Occu : Household,
2. Sachin S/o Kashinath Balwad,
Age : Major, Occu : Service,
3. Asha D/o Kashinath Balwad,
Age : Major, Occu : Education,
4. Sow. Usha W/o Balkrushana Yenge,
Age : Major, Occu : Household,
5. Sow. Meena W/o Vijay Shengade,
Age : Major, Occu : Hosehold,
6. Sow. Alka W/o Sham Yelmote,
Age : Major, Occu : Hosehold,
All R/o : Gangakunj, Behind Tahsil
Office, Udgir, Tq. Udgir, Dist. Latur. .. Appellants

Versus

1. Mr. Balasaheb Pandharinath Malage,
Age : 62 years, Occu : Business,
R/o : Near Udgir Railway Station,
Udgir, Tq. Udgir, Dist. Latur
2. The Municipal Council, Udgir,
Through its Chief Officer,
Udgir, Tq. Udgir, Dist. Latur .. Respondents

Shri K.J.Suryawanshi,Adv. For appellants
Shri Sharad S. Shinde h/f Shri Bhavthankar,Adv. For R.1.

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CORAM : S.V.GANGAPURWALA,J.

DATED : 28TH SEPTEMBER, 2015

ORDER :-

1] Mr.Suryawanshi, learned counsel submits that the Suit filed by present respondents for injunction is dismissed by the trial Court, the plaintiff filed appeal before the District Court. In the said appeal, present appellants filed Cross Objection to the extent of finding on issue of ownership. The plaintiff withdrew the appeal. The Court remitted the matter to the trial Court upon Cross Objection of the present appellants. The learned counsel submits that the Cross Objection should have been decided by the District Court itself. There was no need to remit the matter back to the trial Court. The appellate Court ought to have considered the evidence and should have decided the appeal. The sale deeds on record would have proved the title of the present appellants. The said aspect has not been considered. When the plaintiff withdrew the appeal, the appellate Court ought to have considered Cross Objection on its own merits. The plaintiffs have withdrawn the appeal and accepted the judgment of the trial Court.

2] I have heard learned counsel for the respective parties.

3] This being an Appeal against order of remand can only be considered on substantial question of law. The appeal has been withdrawn by the original plaintiff. Be that as it may. The defendant

was aggrieved by the finding given on some of the issues. The appellate Court has observed that the trial Court while deciding the issue on title has only considered the T.I.L.R. Report and boundaries as shown in the sale deed of the defendant have been ignored. The Court found that it would be appropriate to allow the parties to lead more evidence on disputed point about ownership and possessions as claimed by them.

4] The Court has properly exercised its discretion in remitting the matter back. I do not see any substantial question of law in the present appeal. Appeal from Order as such is disposed of. No costs.

[S.V.GANGAPURWALA,J.]

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