

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 398 OF 2012

(Balu Rambhau Lokhande and
others Appellants

versus

Suresh Jijyaba Pomne and
others Respondents)

None for appellant.
Mr.Dilip Bodake Advocate, for Respondent Nos.1 & 2.

CORAM : R.K.Deshpande, J.
DATED : 8th JULY, 2015.

P.C.

C.A.S. No. 996 OF 2015

None for the appellants.

After going through the contents of the application, I am satisfied that sufficient cause and case is made out for restoration. Hence, the order dated 29th October, 2014 passed by this court dismissing the second appeal in default is recalled.

The second appeal is restored along with Civil Application No. 1640 of 2012.

Civil application stands disposed of.

S.A. No. 398 of 2012.

None appears for the appellant.

With the assistance of the learned counsel appearing for the respondents, I have gone through the judgment and order passed by the Courts below.

The trial Court had allowed the application under Order VII, Rule 11(d) of C.P.C on 3rd February, 2010, holding that the suit challenging the order passed by the Mamlatdar's Court under Section 5 of the Mamlatdar's Court Act is barred by Section 26 therein. Civil Appeal No. 18 of 2010 was preferred by the plaintiffs. The appeal has been allowed and the order passed by the trial Court has been set aside on 25th November, 2010 and the trial Court is directed to proceed with the suit in accordance with law. The original defendants are, therefore, before this Court in this second appeal.

With the assistance of the learned counsel appearing for the respondents, I have gone through the copy of the plaint, which claims several reliefs, one of which is to challenge the order passed under Section 5 of the Mamlatdar's Court Act. If that relief is excluded, then the question of easementary right is required to be considered to grant the relief claimed in other prayer clauses. In such a situation,

the suit could not have been dismissed under Order VII, Rule 11 (d) of C.P.C by the trial Court. The appellate Court also could not have gone into the question as to the maintainability of the suit challenging the decision given by the Mamlatdar's Court. The trial Court could have been directed to frame appropriate issue and to try the same in accordance with law.

In view of above, no substantial question of law arises for consideration in this second appeal, the same is dismissed. It is, however, made clear that the trial Court shall be at liberty to frame appropriate issue including the bar of the civil Court jurisdiction to grant relief in terms of prayer clause (a) made in the suit and none of the observations made by the Courts below shall come in the way of the parties.

(R.K.DESHPANDE, J.)