

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.146 OF 2014

Bharati Rajan Chavan	... Appellant
vs.	
Sattu Mahadu Turde and Others	... Respondents

Mr. Rakesh Bhatkar, for the Appellant.
Mr. Ketan Joshi, for Respondent Nos. 1 to 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **24th NOVEMBER, 2015**

P.C.:

. This Appeal is preferred against the order dated 17th November, 2011 passed by the District Judge, Pune. By the said order, the learned Judge allowed the Appeal and remanded Civil Suit No. 108 of 2006 under Order 41, Rule 23(A) of the Code of Civil Procedure for retrial and to decide the suit afresh in accordance with law.

2. A suit was filed by the Respondents/original Plaintiffs before the Court of Joint Civil Judge, J.D. Vadgaon Maval bearing

Regular Civil Suit No. 108 of 2006 for declaration that sale deed dated 15th February, 2006 is not binding on them and also for the permanent injunction.

3. The property was jointly owned by the Plaintiffs and their co-sharers. The co-sharers were not the party to the suit. So also no prayer was made for cancellation of the impugned sale deed where the fraud is pleaded by the Plaintiffs in the original suit. On this technical ground, the suit was dismissed by an order dated 30th June, 2008 by the learned Judge against which the Plaintiffs filed Civil Appeal No. 564 of 2008 before the District Judge, Pune.

4. During the pendency of the Appeal, the application below Exhibit “16” for amendment of the Plaint and application Exhibit “24” for adding the party i.e. co-sharers were made. The learned District Judge allowed these applications and at that time passed the order of remanding the matter. Hence the present Appeal.

5. The learned counsel for the Appellant has submitted that the learned District Judge ought not have remanded the matter and

ought not allowed the applications below Exhibit - 16 and 24. This amounts to change of the entire suit. The Plaintiffs/Respondents wanted to avoid the Court fees and therefore they prayed for cancellation of the impugned sale deed. So also they did not make co-sharers party to the proceeding. Due to the order passed by the learned Judge, the entire nature of the suit has changed and it will prejudice to the Appellant.

6. The learned counsel for the Respondents opposed the Appeal. He submitted that the learned Judge has considered all the aspects and have rightly observe that the suit was dismissed on the technical ground. It is also mentioned that the Appellant was a power of attorney holder of the land and she herself is a purchaser. She herself executed a sale deed on 15th February, 2006. The consent obtained by the parties is disputed.

7. Perused the judgment and order of the trial Court dated 30th June, 2008. So also the order dated 17th November, 2011. The view taken by the learned Judge that the issues are required to be properly adjudicated and therefore he allowed the application is

correct. I do not find any illegality in the order passed by the learned Judge. Hence, I maintained the order.

8. The Appeal stands dismissed.
9. The trial Court to proceed with the matter and try to complete the suit till 31st October, 2016.
10. All the contentions raised by the parties are kept open.

(MRS.MRIDULA BHATKAR, J.)