

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.642 OF 2011
WITH
CIVIL APPLICATION NO.1517 OF 2011

Smt. Housabai Bhiku Chaware & Ors. ..Appellants.
V/s.
Shankar Mhasku Mhetre & Ors. ..Respondents.

Mr.A.P.Kulkarni for the appellants.
Mr.A.B.Tajane for the respondents.

CORAM : R.K.DESHPANDE, J.

DATED : 5TH AUGUST, 2015

P.C. :-

1. On 29th November, 2011, this Court passed an order as under :-

“1. Apart from other submissions, the learned counsel for the appellants invited the attention of the Court to the question (D) formulated in the Memorandum of Appeal. It is not clear from the Judgment of the Appellate Court whether the respondents challenged the decree passed in R.C.S. no.183 of 1980. If the said decree has not been challenged by the respondents, prima facie decree passed by the Appellate Court will not be sustainable.

2. Issue notice to the respondents returnable on 12th January 2012. Hamdust allowed. Private service is

permitted. The Advocate for the appellant shall serve a private notice along with an ordinary copy of this order. ”

2. The learned counsel appearing for the respondents could not point out any discussion in the judgment of the lower Appellate Court in respect of the decision in Regular Civil Suit No.183/1980 delivered on 28th September, 1994. A decree decree was passed by the trial court in the said suit holding that the agreement in question is not binding upon the appellant in the Second Appeal.

3. Admit on the following substantial question of law:-

“ Whether the lower Appellate Court was right in passing decree for specific performance of contract in ignorance of decision in Regular Civil Suit No.183/1980 which was rendered on 28th September, 1994 ?”

4. Undisputedly, the lower Appellate Court has not considered the decision of the trial Court in Regular Civil Suit No.183/1980 rendered on 28th September, 1994. Its effect will have to be considered by the lower Appellate Court.

5. In the result, the Second Appeal is allowed. The Judgment and order dated 18th April, 2011 delivered by the lower

Appellate Court in Regular Civil Appeal No.865/1999 is hereby quashed and set aside and the matter is remanded back to the lower Appellate Court to decide the said appeal in the light of the observations by this Court.

6. The parties to appear before the lower Appellate Court on 1st September, 2015. The learned Appellate Court to decide the matter within a period of 3 months from the date of the first appearance of the parties.

7

JUDGE