

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 564 OF 2014
ALONGWITH
CIVIL APPLICATION NO. 1385 OF 2014
IN
SECOND APPEAL NO. 564 OF 2014

Shri. Buran Ahmad Kothawale

.....Appellant

: V/S :

Smt. Meharajbi Moula Mujawar and Ors.

.....Respondents

* * * * *

Mr. P.M. Arjunwadkar, Advocate for the appellant.

* * * * *

Coram :- Smt. R.P. SondurBaldota, J.

18th February, 2015.

P.C. :-

1). The appellant herein is original defendant no.1. He challenges the judgment and order dated 27th June, 2014 passed by the District Judge-1, Jaysingpur in Regular Civil Appeal no. 19 of 2011 preferred by him. The impugned order dismisses the appeal and confirms the decree of the trial Court for partition of the suit property. At the time of trial, the appellant had not challenged the territorial jurisdiction of the trial Court to entertain and try the suit. The challenge,

however, was taken for the first time before the lower appellate Court contending that the suit property was situated within the jurisdiction of the Court at Kurundwad and therefore the suit ought to have been tried by the Court at Kurundwad. It was, further, contended that even if no challenge was raised by the defendants to the suit to the jurisdiction of the Court at Jaysingpur, it was the duty of the Court to ensure that the suit property fell within its territorial jurisdiction and therefore the appellant could raise the contention at the stage of the First Appeal for the first time. The lower Appellate Court considered the question of jurisdiction raised by the appellant, as also the merits of the appeal and dismissed the same.

2). Mr. Arjunwadkar, the learned Advocate appearing for the appellant submits that, before the lower appellate Court, the appellant had filed an application raising specific issue of territorial jurisdiction of the trial Court and that the Counsel for both the sides had canvassed their submissions only on the question of jurisdiction of the trial Court. There were no arguments canvassed on the merits of the case. Despite the fact, the lower appellate Court proceeded to decide the appeal on merits. Therefore, it is the argument of Mr. Arjunwadkar that the matter needs to be remanded to the lower appellate Court for hearing on merits.

3). The grounds of challenge to the impugned order in the

present appeal are restricted to the appellate court's decision on merit without the submissions being advanced thereon. There is not a single ground in the appeal to challenge the findings of the lower appellate Court for hearing on merits. There is nothing on record to indicate that the arguments advanced before the lower appellate Court were only on the question of territorial jurisdiction of the trial Court and not on merits of the appeal. It is well established position in law that, the record of the Court alone speaks for the events transpiring in the Court. In the absence of any material on record to indicate that the arguments advanced were limited to the question of jurisdiction, the contention of the appellant in that regard, cannot be accepted. Since, there is no challenge to the decision of the appeal Court on merits, there is no substance in the appeal. Hence, the appeal is dismissed.

4). With the dismissal of the Second Appeal, Civil Application No. 1385 of 2014 becomes infructuous and does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)