

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 2813 OF 2014.

Pramod Yashwant Panse

Since Deceased

a) Smt.Asha Pramod Panse & ors.

.. Petitioners

Vs.

Smt.Pushpa Bhaskar Gadre.

.. Respondent

Mr.N.V.Vechalekar i/b N.V.Vechalekar & Co., for Petitioners.

None for Respondent.

***CORAM: N.M.Jamdar J.
Monday 30 March, 2015***

Oral Order:

Heard learned counsel for the Petitioners. Notice was issued to the Respondent on 25 September 2014. In the notice dated 25 September 2014, it was directed that the the petition will be disposed of finally at the stage of admission and that despite service if the Respondent failed to appear, Court will proceed with the matter on merits. Respondent has been served. None appears for Respondent. Taken up for disposal.

2 By a common order dated 2 January 2013 passed in Civil Appeal No.238, 239, 240 and 241 of 2009, the learned District Judge Pune, dismissed the appeals. The learned District Judge dismissed the appeals in absence of the Appellants or their Advocate and proceeded to pass strictures as regards suppression of some document by the Appellant-Petitioner.

3 A Writ petition No.2814 of 2014 was filed by the Petitioners in respect of order passed in Appeal No.239 of 2014 which was disposed of by this Court on 25 September 2014. The present petition arises from Appeal No.241 of 2009.

4 The learned Single Judge while disposing of the Writ Petition No.2814 of 2014 observed as under -

“6. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. The learned District Judge while dismissing the appeal observed that the plaintiff/appellant has suppressed the material fact of execution of Sale Deed dated 14/07/2009. The learned District Judge further observed that plaintiff practiced fraud on the Court. In my opinion, the learned District Judge should have dismissed the appeal in default as contemplated under Order XIV Rule 17 of C.P.C. in absence of plaintiff and his advocate. The learned District Judge was not justified in commenting on the conduct of the plaintiff as regards suppression of material document as also playing fraud upon the Court without hearing the plaintiff and his advocate. These aspects are serious in nature and these comments would have been justified after hearing the plaintiff and his advocate. I am, therefore, of the opinion that the learned District Judge has committed error in dismissing the appeal after considering the conduct of plaintiff. In any case these observations have serious repercussions. In view thereof, the impugned order passed below Exh.1 is liable to be set aside thereby restoring the Civil Appeal No. 241 of 2009 to the file of the District Court. Hence, the following order.

5 The learned Single Judge thereupon set aside the order passed by the learned District Judge and restored the appeal to the file of the learned District Judge keeping all the contentions of the parties open. The present petition being identical also requires to be disposed of in a similar manner.

Accordingly, the petition is disposed of as under.

Order

- 1) *The judgment and order dated 02/01/2014 passed by learned District Judge-6, Pune below Exh.1 in Civil Appeal No.241 of 2009 is quashed and set aside.*
- 2) *Civil Appeal No.241 of 2009 is restored to the file of the District Court.*
- 3) *All contentions of the parties on merits are expressly kept open.*
- 4) *Rule is made absolute in the aforesaid terms.”*

(N.M.Jamdar, J.)