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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12438 OF 2015

Shri Vitthal Bapu Dhangar

.. Petitioner

Vs.

Appu Bhujinga Dhangar (D.H.)

A. Datta Appa Dhangar and others

.. Respondents

Mr.Sandeep S.Koregave, Advocate for the Petitioner.

Ms.Neha Bhide, Advocate for Respondents No. 3 & 4.

CORAM : R.G.KETKAR, J.

DATED : 21st DECEMBER, 2015

P.C. :

. Heard Mr.Sandeep Koregave, learned Counsel for the petitioner and Ms. Neha Bhide, learned Counsel for the respondents No. 3 & 4.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the order dated 27/10/2015 passed by the Assistant Registrar, Decree Department, Appellate Side, High Court. The plaintiff made application for recalling order dated 07/04/2012 whereby Appeal From Order No. 652 of 2009 preferred by the plaintiff was transmitted to the District Court.

3. By the impugned order, the Assistant Registrar held that Appeal From order was transmitted to the District Court as per Section 16 of the Maharashtra Civil Courts Act and therefore,

nothing can be done administratively in the matter.

4. Mr.Koregave orally seeks leave to convert this Writ Petition into Civil Revision Application. He also orally applies for deleting respondents No. 1 to 3 from this proceedings. Leave as prayed for is granted. Amendment shall be carried out forthwith. At the joint request of the learned Counsel appearing for the parties, Civil Revision Application is taken up for admission. Rule. Ms.Bhide waives service for respondents No.3 & 4. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

5. It appears that plaintiff had instituted Regular Civil Suit No. 72 of 1982 before the learned Civil Judge, Junior Division, Jaisingpur for possession of the suit land. On 24/07/2000, Suit was dismissed. The plaintiff instituted Regular Civil Appeal No. 264 of 2000 before the District Judge at Kolhapur. The Appeal was transferred to the learned District Judge- 1 at Jaisingpur by order dated 03/12/2004 and it was renumbered as Regular Civil Appeal No. 71 of 2004.

6. That Appeal was dismissed in default on 19/04/2006 as the Advocate for the appellant-plaintiff was not present. The plaintiff thereafter filed Civil Misc. Application No. 20 of 2006 for restoration of the Appeal which was dismissed by the learned District Judge on 16/03/2009. It is against that decision, plaintiff had preferred

Appeal From Order in this Court under Order 43 Rule 1(t) of the Code of Civil Procedure, 1908 (for short 'C.P.C.')

7. Having regard to Section 106 of C.P.C., the plaintiff has rightly instituted Appeal From Order in this Court and therefore, the Registry is not justified in transmitting the Appeal to the District Court.

8. In view thereof, the impugned order dated 27/10/2015 is quashed and set aside. Appeal From Order No. 652 of 2009 is restored to the file of this Court to its original position. Order accordingly.

(R.G.KETKAR, J.)