

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.442 OF 2015

WITH

CIVIL APPLICATION NO.961 OF 2015

IN

SECOND APPEAL NO.442 OF 2015

Dhiraj Anand Deshmukh ... Appellant
(Org. Deft.No.4)

vs.

Dinkar Dhondiba Mane
Since deceased through his legal heirs
& representatives
(1A) Suman Dinkar Mane & Ors. ... Respondents
(Org.Plaintiffs)

.....
Mr. Surel S. Shah for the appellant.
....

CORAM : K.K. TATED, J.
DATE : 26TH AUGUST, 2015

P.C.:

. Heard the learned counsel Mr. Surel S. Shah for the appellant.

2. This appeal is preferred by defendant no.4 challenging the order passed by the learned District Judge-1, Malshiras in Review Application No.01 of 2012, reviewing the order dated 20th October, 2012 passed by the learned District Judge-1, Malshiras in Regular Civil Appeal

no.05 of 2006 by which Appellate Court deleted the following portion from **clause-5** of the operative part of the decree which reads thus:

“The defendant no.4 is directed to pay price of excess, to whom it will be allotted.”

3. In the order dated 13th October, 2014, the Appellate Court recorded that the order was passed by consent of both the parties. The learned counsel for the appellant submits that the Advocate who appeared on behalf of appellant not given any consent for the said order. In view of this fact, time was granted to the appellant to file an affidavit of the concerned Advocate for explaining as to whether the consent was given by him or not.

4. Liberty granted to the appellant to place on record the modified copy of the decree dated 13th October, 2014 and other relevant documents.

5. The learned counsel for the appellant submits that the original plaintiffs/respondents filed execution application for executing the decree passed by the trial Court.

6. He submits that if the excess land which is in possession of defendant no.4 is handed over to the original plaintiffs/respondents,

nothing will survive in the present Second Appeal. Hence, he seeks stay of the order passed by the District Judge on 13th October, 2014 in Civil Review Application no.01 of 2012.

7. Considering the submissions made by the learned counsel for the appellant and the order passed by the Appellate Court in Civil Review Application no.01 of 2012, the following order is passed:

- (a) Office is directed to issue notice before admission to respondents/plaintiffs returnable after 10 weeks.
- (b) In addition to the usual mode of service, the appellant is permitted to serve the respondents by private notice either by registered post A.D. and/or by hand delivery and file the affidavit of service to that effect on or before the next date.
- (c) Till the next date, the operation and implementation of the order dated 13th October, 2014 passed by the learned District Judge-1, Malshiras in Civil Review Application No.01 of 2012 is stayed.

(K.K. TATED, J.)