

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

SECOND APPEAL NO.573 OF 2015

Shamrao Aba Padalkar

..Appellant

V/s.

Sarjerao Sadashiv Padalkar & Ors.

.. Respondents

Mr.Ajit Kenjale for the Appellant.

Mr.Rajesh Dharap for Respondent No.10(a) to 10(f), 7, 9, 12 to 15, 17(b), 19, 21(a) to 21(e), 21(g), 23 and 32.

Mr.Pratap Patil for Respondent Nos.1(a) to 1(d) and 2 to 5.

CORAM : R.D. DHANUKA, J.

DATE : 15th NOVEMBER, 2016.

P.C.

1. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant (Original Plaintiff) has impugned the judgment and decree passed by the learned District Judge-1, Islampur allowing the Regular Civil Appeal No.9 of 2008 filed by the defendant and reversing the decree passed by the learned Trial Judge in favour of the Plaintiff.

2. The learned counsel appearing for the appellant invited

my attention to the evidence referred by the learned Trial Judge in Regular Civil Suit No.76 of 1996 while decreeing the suit filed by the appellant inter-alia praying for partition and separate possession and also the conclusion drawn by the first Appellate Court. He submits that though the first Appellate Court reversed the decree passed by the learned Trial Court passed in favour of the plaintiff, the first appellate Court has not considered the evidence recorded by both the parties independently and without assigning any reason has dismissed the appeal.

3. I have heard the learned counsel appearing for the Respondent. The learned counsel for the Respondent is not able to justify the impugned order passed by the first Appellate Court. In my view the first Appellate Court ought to have appreciated the oral and documentary evidence led by both the parties, while reversing the decree passed by the learned Trial Judge. In my view the Appellant has made out a case for setting aside the decree passed by the first Appellate Court on 09th September 2014 and for remand of the matter for disposal of the Regular Civil Appeal No.9 of 2008. I therefore pass the following order:-

ORDER

(a) Impugned judgment and decree dated 09th September

2014 passed by the learned Civil Judge Senior Division, Islampur is set aside.

(b) Regular Civil Appeal No.9 of 2008 filed by the defendant is restored to file for hearing and final disposal denovo.

(c) It is made clear that the learned District Judge shall decide the Regular Civil Appeal fresh without being influenced by the observations made and the conclusion drawn in the judgment and decree dated 09th September 2014 and shall decide in accordance with law.

(d) Second Appeal No.573 of 2015 is allowed in the aforesaid terms.

(e) Hearing of the Regular Civil Appeal No.9 of 2008 is expedited. The learned District Judge shall make an endeavor to decide the appeal within six months from the date of the communication of this order.

(f) Both the parties shall co-operate with each other and with the learned District Judge to dispose of the Regular Civil Appeal No.9 of 2008 expeditiously. No order as to costs.

(R.D. DHANUKA, J.)