

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.962 OF 2015

with
CAF/1645/2015
WITH
CAF/1646/2015

Vishnu J. Gujar & Ors.

... Appellants

Vs.

Anil Dattatraya Chogle

... Respondent

Mr.S.S. Kulkarni i/b P.K. Bhohade for the Appellant
Mr.Harish Bhatia for Respondent No.1

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 18th FEBRUARY, 2016

P.C.:

1. This suit was earlier filed in the High Court and it was transferred to the City Civil Court and again due to pecuniary jurisdiction, it was transferred to the High Court. However, it was sent back to the City Civil Court due to the increase in the pecuniary jurisdiction of the District Courts.

2. This First Appeal is filed against the judgment and order dated 28.11.2014 by which Suit No.7673 of 2002 is decreed. The present respondents are the original plaintiffs, who filed the suit for perpetual injunction restraining the defendants from causing interference in plaintiff's

enjoyment, occupation and possession fo the suit premises and also from encroaching upon the suit premises of the plaintiffs. On 29.9.2001, before the City Civil Court, roznama to that effect is produced and the fact of filing of written statement by the original defendants is not disputed by the respondent. It was submitted that the original defendant VishnuJayramsa Gujar has expired and in his place his legal representatives were brought on record. However, it was submitted by the learned Counsel for the appellants that though the legal representatives were brought on record, they were not served and further written statement for them was not filed. He pointed out that the roznama dated 21.8.2014 in which the learned trial Judge has recorded that the defendant failed to submit written statement and therefore, the matter proceeded without written statement. However, in the roznama dated 11.11.2014, the trial Court asked the learned Counsel for the defendants to point out the date when the order of no written statement was passed. However, due to inadvertence, he could not point out and the Court proceeded and the suit was decreed. The learned Counsel submitted that the written statement of the original defendants is on record, however, it was not considered.

3. The learned Counsel for the original plaintiffs has fairly conceded this position and admitted that the written statement was filed by the original defendants.

4. In view of these facts and submissions, the legal representatives of the deceased defendant, who were brought on record, could have adopted the same written statement or would have filed additional written statement by following proper procedure. Thus, when the written statement is on record, it is necessary for the trial Court to settle the issues and then proceed. However, no issues were settled and the learned Judge had proceeded as if there was no written statement. In view of this, the impugned order is required to set aside.

5. Accordingly, the following order is passed:

- i) The impugned judgement and order dated 28.11.2014 is set aside and the matter is remanded to the learned trial Judge of the trial Court.
- ii) The suit is restored to its original file with all the orders, before the learned Judge of the City Civil court to consider the written statement and settling of issues and further try the matter as per the procedure.
- iii) The legal representatives of the deceased may adopt the written statement or may file an additional written statement by taking appropriate proceedings.

iv) The parties to appear before the trial Court on 7.3.2016 at 11am and the learned trial Judge to decide the suit as expeditiously as possible and preferably within 18 months from today i.e., till November, 2017.

6. First Appeal is disposed of in the above terms. Civil Applications also stand disposed of.

(MRIDULA BHATKAR, J.)