

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

*CIVIL APPLICATION NO. 129 OF 2014
IN
SECOND APPEAL NO. 44 OF 2014*

Shri Purushottam @ Sanjay Uttam Fadate ... Applicant
V/s.
Smt. Pramila Uttam Fadate ... Respondent

Mr. Madhav Jamdar for the Applicant.
Mr. N.V. Walawalkar, Sr. Advocate a/w. Mr. S.M. Sabrad for the Respondent.

***CORAM : N.M. Jamdar, J.
Saturday, 16 April, 2016.***

P.C. :-

1. By the consent of parties Second Appeal is taken out for hearing. The Appeal was admitted on 28.10.2014 on the following substantial question of law :-

“Whether the Appellate Court can pass decree which is not prayed in the plaint?”

2. At the time of hearing of the Civil Application, the learned counsel for the parties also addressed the Court on merits of the Second Appeal. The main contention of the Appellant is regarding finding rendered by the Appellate Court that the registered sale deed dated 12.02.1979 which speaks of Municipal House No.1901(1) covers the Municipal House No.1901 (4), is beyond the scope of the suit and there

is no discussion by the Appellate Court how the respondent is entitled to decree in respect of Municipal house 1901(1). It is the contention of the learned counsel for the Appellant that not only there is no discussion by the Appellate Court on this aspect but the Appellate Court has also framed additional issues on 23.10.2013, so that the matter could be remanded back to the trial Court. The learned counsel for the Respondent submits that instead of keeping the Appeal pending, the respondent has no objection if the order passed by the learned District Judge, Sindhudurg-Oros, and the judgment and decree and the order passed by the Civil Judge, Junior Division, Malvan, are set aside and the suit is restored to the file of Civil Judge, Junior Division, Malvan, for consideration of the issues already framed as well as the additional issues framed by the learned District Judge on 23.10.2013.

3. Since the Respondent are accepting the submission made by the learned counsel for the Appellant in this Appeal, there is no reason why the course of action suggested by the learned counsel for the Respondent is not adopted. Accordingly, the Second Appeal is disposed of by the following order :-

- i) The Judgment and decree passed by the District Judge, Sindhurug-Oros, dated 15.11.2013 and the judgment and order passed by the Civil Judge, Junior Division, Malvan, dated 14.09.2012 are quashed and set aside.
- ii) The Regular Civil Suit No.79 of 2009 stands restored to the file of the learned Civil Judge, Junior Division, Malvan, to be continued from the stage after the issues are framed.

- iii) The additional issues framed by the learned District Judge, Sindhudurg-Oros, on 23.10.2013 will also be added to the issues already framed and from this stage onwards the trial by the Civil Suit No.79 of 2009 will commenced before the learned Civil Judge, Junior Division.
- iv) Liberty to the parties to lead additional evidence if any. The learned Civil Judge, Junior Division, will draw a time table for leading additional evidence, if any.
- v) The suit will be decided on its own merits.

4 The Second Appeal is accordingly disposed of in above terms. The Civil Application is, therefore, does not survive and is disposed of.

5 The parties will appear before the learned Civil Judge, Junior Division, on 25.04.2016. It is open to the parties to make request to the learned Civil Judge, Junior Division, Malvan, for early disposal of the Suit, which request the learned Civil Judge will consider keeping in mind earlier time bound commitments.

(N.M. Jamdar, J.)