

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 659 OF 1992

Bansi Ramchandra Dhame

..... Appellant

VERSUS

**Ambadas Ramchandra Dhame,
Since deceased through heirs and
legal representatives & Ors.**

..... Respondents

Mr.N.V.Walawalkar, Senior Advocate, i/b. Mr.P.M.Arjunwadkar for the Appellant.

Mr.Rameshwar Gite for Respondent nos. 1A to 1C.

CORAM : R.D. DHANUKA, J.

DATE : 24th OCTOBER, 2016

P.C.

The arguments in this matter are concluded. At this stage, the learned counsel appearing for the respondent nos. 1A to 1C on instruction states that his clients have no objection if the impugned order passed by the first appellate court on 3rd September, 1992 in Civil Appeal No.61 of 1990 is set aside and the matter is remanded back to the first appellate court for deciding the said civil appeal afresh. He submits that his clients have also no objection if the order passed by the first appellate court dated 3rd September, 1992 allowing the application filed by his clients under Order 41 Rule 27 is also set aside (Ex.47). The statement is accepted.

2. In view of the statement made by the learned counsel for the respondent nos.1A to 1C, both the parties have agreed that no reasons are required to be recorded while disposing of this second appeal.

3. The impugned judgment and decree dated 3rd September, 1992 passed by the

first appellate court in Civil Appeal No.61 of 1990 is accordingly set aside. Civil Appeal No.61 of 1990 is restored to file. Order dated 3rd September, 1992 allowing the application under Order 41 Rule 27 filed by the respondent nos.1A to 1C is set aside.

4. The respondent nos.1A to 1C are permitted to file a fresh application under Order 41 Rule 27 before the first appellate court within six weeks from the date of receipt of records of the proceedings from this court and a copy thereof shall be served upon the appellants' advocate simultaneously.

5. It is made clear that the appellants shall be entitled to file reply to the said application filed under Order 41 Rule 27. The learned first appellate court shall decide the said application as may be filed by the respondent nos.1A to 1C first before deciding the Civil Appeal No.61 of 1990 in accordance with law.

6. It is made clear that it would be for the first appellate court to decide either to remand the matter back further to the learned trial judge or not after hearing both the parties and to permit parties to apply for amendment of their respective pleadings.

7. It is made clear that the first appellate court shall not be influenced by the observations made and the conclusion drawn by the first appellate court in the judgment and decree dated 3rd September, 1992 and the observations and conclusion drawn in the order passed in the application filed by the respondent nos. 1A to 1C under Order 41 Rule 27 and shall decide the said application on its own merits.

8. Second appeal is disposed of in the aforesaid terms. No order as to costs.
9. The first appellate court shall make an endeavour to dispose of the application proposed to be made by the respondent nos. 1A to 1C under Order 41 Rule 27 expeditiously and not later than four months from the date of making such application.
10. The parties are at liberty to apply for expeditious hearing of the Civil Appeal No.61 of 1990 after disposal of such application. During the pendency of the Civil Appeal No.61 of 1990, both the parties have agreed not to create third party rights in respect of the suit property. Statement is accepted.
11. The office is directed to transmit the papers and proceedings in Civil Appeal No.61 of 1990 before the first appellate court expeditiously.

(R.D.DHANUKA, J.)