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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.373 OF 2014

Kondiba D. Nalawade & Ors.	...Appellants
V/s.	
Navnath J. Nalawade & Ors.	...Respondents

Mr.G.N. Salunke for the Appellants.

Mr.Jaydeep Deo for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 3RD OCTOBER, 2016.

P.C. :-

1. The respondent nos.2 to 5 are absent, though served.
Learned counsel appearing for the respondent no.1 waives service.
2. Heard the learned counsel for the appellant and the respondent no.1, who is the contesting respondent.
3. The following substantial question of law is formulated :

A) Whether the Appeal Court below committed substantial error of law in allowing the appeal without allowing or dismissing the cross objections Exhibit-8 on record ?
4. With the assistance of the learned counsel for both the

parties I have perused the cross-objection filed by the appellants (original defendant nos.1, 3 and 4). There is no dispute that the cross-objection was filed by the defendant nos.1, 3 and 4 in the Regular Civil Appeal No.16 of 2012 filed by the original plaintiff nos.1 to 3.

5. A perusal of the impugned judgment and decree dated 29th November, 2013 passed by the learned District Judge - 4, Solapur clearly indicates that though the defendant nos.1, 3 and 4 had filed the cross-objection in Regular Civil Appeal No.16 of 2012, the learned trial Judge has not at all dealt with and disposed of the cross-objection filed by the appellants in the impugned judgment and decree dated 29th November, 2013. Learned counsel for the respondent no.1 could not point out from the judgment and decree dated 29th November, 2013 that the cross-objection filed by the appellants has been dealt with, considered and decided in the impugned judgment and decree dated 29th November, 2013.

6. In my view, the learned District Judge – 4, Solapur ought to have dealt with, discussed and disposed of the cross-objection also along with Regular Civil Appeal No.16 of 2012, but has neither discussed, referred to nor has dealt with the cross-objection and has merely decided the Regular Civil Appeal No.16 of 2012. The impugned judgment and decree passed by the learned District Judge

– 4, Solapur is thus *ex-facie* erroneous. I am thus inclined to accept the submission of the learned counsel for the appellants (original defendant nos.1, 3 and 4) that the impugned judgment and decree dated 29th November, 2013 shall be set aside and the entire matter be remanded for a decision afresh in Regular Civil Appeal No.16 of 2012 as well as in the cross-objection.

7. I therefore, pass the following order :-

a). The impugned judgment and decree dated 29th November, 2013 passed by the learned District Judge – 4, Solapur is set aside. Regular Civil Appeal No.16 of 2012 is restored to file. The learned District Judge – 4, Solapur is directed to decide the Regular Civil Appeal No.16 of 2012 along with cross-objection filed by the appellants herein dated 16th February, 2012 expeditiously.

b). It is made clear that the learned District Judge – 4, Solapur shall decide the matter afresh without being influenced by the observations made and the conclusion drawn in the impugned judgment and decree dated 29th November, 2013.

c). Substantial question of law framed aforesaid is answered in affirmative. The second appeal is allowed in aforesaid terms. No order as to costs.

d). Learned District Judge – 4, Solapur shall make an endeavor to dispose of the Regular Civil Appeal No.16 of 2012 along

with the cross-objection within six months from the date of communication of this order. Both the parties are directed to co-operate with each other and with the learned District Judge – 4, Solapur in expeditious disposal of the Regular Civil Appeal No.16 of 2012 along with the cross-objection.

(R.D. DHANUKA, J.)