

Sequeira

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

***SECOND APPEAL NO. 241 OF 2015
Along with
CIVIL APPLICATION NO.516 OF 2015***

Dattram Kashinath Mhatre & anr. ... Appellants
V/s.
Mr.Nilesh Yashwant Mhatre & anr. ... Respondents.

Mr.Shriram Kulkarni, for Appellants / Applicants.
Mr.Kuldeep Nikam, for Respondent Nos.1 & 2.

***Coram : N.M. Jamdar, J.
Thursday 5 May, 2016.***

Oral order :-

Admit on the following question of law -

1. Whether in the facts and circumstances of the case, the learned District Judge, was justified in allowing the Appeal without stating reasons.
2. The learned counsel for the Respondents waives service. Taken up for disposal forthwith. Paper book dispensed with.
3. The Appeal is filed by the original Defendant Nos.2 and 3 challenging the order passed by the District Judge, Raigad allowing the Appeal filed by the Respondent No.1-original Plaintiff and setting aside

the dismissal of the Suit by the learned Civil Judge, Junior division, Pen. When the Appeal came up on board on 17 April 2015, the grievance made by the learned counsel for the Appellant that the Judgment and Order passed by the learned District Judge is unreasoned, was noted by this Court passing following order-

'Heard Mr.Shriram S.Kulkarni, learned Counsel for the appellants.

2. By this appeal under section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No.2 & 3 have challenged the judgment and decree dated 29/10/2014 passed by the learned 2nd District Judge, Raigad, Alibaug in Civil Appeal No.152 of 2008. By that order, the learned District Judge allowed the appeal preferred by respondent No.1 original plaintiff and quashed and set aside the judgment and decree dated 04/08/2008 passed by the learned Civil Judge, Junior Division, Pen in Regular Civil Suit No.34 of 2003 and decreed the suit.

3. Mr.Kulkarni submitted that respondent No.1 instituted suit for declaration of his ownership on the basis of Will dated 21/03/1999 executed by Shantabai Khandu Patil, real sister of plaintiff's father Yashwant Mhatre bequeathed property in his favour and for perpetual injunction. He submitted that Shantabai had purchased the property in dispute on 28/01/1964. He further submitted that the trial Court dismissed the suit by holding that respondent No.1 did not establish execution of Will. The attesting witness Sakharam Bandhankar deposed that Will was handwritten. However, Will that was produced on record is typed copy. He further submitted that the learned District Judge while allowing the appeal has not give any reason. In short, he submitted that the District Court being last fact finding Court ought to have discussed the evidence on record.

4. In view thereof, issue notice to the respondents, returnable on 19/06/2015. The parties are put to notice that

subject to the time constraint and convenience of the Court, appeal may be disposed of at the stage of admission on the following substantial questions of law.

i) Whether respondent No.1 plaintiff has proved Will dated 21/03/1999 executed by Shantabai as free from the suspicious circumstances?

ii) Whether in the facts and circumstances of the present case, the learned District Judge was justified in allowing the appeal, that too, without giving reasons ?

iii) Whether the learned District Judge as a last fact finding Court has properly decided the appeal ?'.

4. Heard learned counsel for the parties. I have gone through the decision of the First Appellate Court. The learned District Judge has, in short six paragraphs, allowed the Appeal. There is no discussion as to how the Will in question is to be considered as valid. The learned Judge has only recorded conclusions which was not expected when the First Appellate Court had reversed the decree. The learned counsel for the Respondents has also not been able to show that the decision of the learned District Judge is a reasoned one.

5. In the circumstances, the question of law framed as above will have to be answered in affirmative.

6. Accordingly, the Judgment and order passed by the learned District Judge, Raigad dated 29 October 2014 is quashed and set aside. The Appeal No.152 of 2008 stands restored to the file of the learned District Judge Raigad, Alibaug to be disposed of on its own merits and as per law.

7. Parties will appear before the learned District Judge, on 13 June 2016.

8. Since the remand is necessitated in view of absence of reasoning on remand the learned District Judge will make an endeavour to dispose of the Appeal at the earliest preferably by end of December 2016.

(N.M. Jamdar, J.)