

Mr. Sugandh B. Deshmukh for Petitioner.
Mr. Rahul P. Walvekar for Respondents No.1A to 1D.
Mr. S. D. Rayrikar, AGP for Respondents No.7 and 8-State.

P.C. :

Heard Mr. Deshmukh, learned Counsel for petitioner, Mr. Walvekar, learned Counsel for respondents No.1A to 1D and Mr. Rayrikar, learned AGP for respondents No.7 and 8-State. On the oral application made by Mr. Deshmukh, respondents No.2 to 6 are deleted from the present proceedings on the ground that no relief is claimed against them. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition, under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 12.01.2016 passed by the learned Ad-hoc District Judge-4, Kolhapur in Miscellaneous Civil Appeal No.73 of 2015. By that order, the learned District Judge allowed the Appeal preferred by respondents No.1A to 1D and quashed and set aside the judgment and order dated 21.01.2015 passed by the learned 2nd Joint Civil Judge, Senior Division, Kolhapur

below exhibit-5 in Regular Civil Suit No.197 of 2014.

3. The only contention advanced by Mr. Deshmukh is that during the pendency of the Suit, respondents No.1A to 1D have sold the property, and therefore, they cannot maintain the Appeal. In fact, petitioner had filed application exhibit-18 for deciding the issue of the locus of respondents No.1A to 1D. However, instead of deciding that application first, the learned District Judge proceeded to decide the Appeal. He submitted that though the learned District Judge heard the petitioner on exhibit-18, the petitioner was not heard while deciding the Miscellaneous Civil Appeal. Mr. Walvekar appearing for respondents No.1A to 1D was not in a position to rebut this contention.

4. In view thereof, on this short ground alone, the impugned order is set aside and Miscellaneous Civil Appeal No.73 of 2015 is restored to the file of the learned District Judge. As respondents No.1A to 1D have sold the property during the pendency of the Suit, liberty is reserved to respondents No.1A to 1D or purchaser to apply for impleadment of the purchaser before the trial Court. Liberty is reserved to the purchaser to get impleaded in the Miscellaneous Civil Appeal. It is made clear that I have not examined the merits of the case. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)