

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

***SECOND APPEAL NO. 833 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 970 OF 2012***

Ravindra Nathaji Metakari,
R/o. Vita, Tal. Khanapur, Dist. Sangli;
& ors.

... Appellants/ Applicants

v/s

Sushila Pandharinath Kadam,
R/o Ramadasnagar, Post: Umbraj
Wadgaon, Tal. Karad, Dist.Satara;
& ors.

... Respondents

Mr.Umesh Mankapure for the appellants/applicants.

Mr.Mahindra Deshmukh for Resp. Nos.1, 3, 4 and 10.

Mr.Tejpai Ingale for Resp. Nos.5A to 5D.

Coram: N.M. Jamdar, J.

Dated: 18 July, 2016

ORAL ORDER:

Heard learned counsel for the parties.

2 Learned counsel for the Appellants states that the contesting parties in this appeal are Respondent Nos.1, 3, 4 and 10 who are the

original Plaintiffs. He states that Respondent Nos.5A to 5D are the heirs of the Defendant No.1. Respondent Nos.1, 3, 4, 10 and 5A to 5D are represented. As regard the other Respondents are concerned, learned counsel for the Appellants submits that these are subsequent purchasers from Defendant No.1 who have not contested the proceedings in the Court below and seeks leave to delete these Respondents from the array of parties in the present second appeal. Learned counsel for the original Plaintiffs joins this request for expeditious disposal of the second appeal. Accordingly, at the joint request of Mr.Mankapure and Mr. Deshmukh, except Respondent Nos.1 to 5, 9 and 10, the other Respondents are deleted. Amendment to be carried out forthwith.

3 Admit on the following substantial question of law :

'Whether the first appellate Court was right in disposing of the appeal in favour of Respondents/ Plaintiffs without considering the cross-objections filed by the Appellants herein ?'

4 The Respondents/Plaintiffs who are the daughters in the family, filed a suit for partition of the suit property. Learned Civil Judge, Junior Division, Vita, partly allowed the Regular Civil Suit No.230 of 1988. Being aggrieved, the Respondents/Plaintiffs filed a Regular Civil Appeal No.73 of 2003 in the District Court. The learned District Judge, by the impugned judgment and order dismissed the

appeal with a modification in respect of shares of Respondent Nos.2 to 4, 5 and 6, which will be instead of 10/50th, was changed to 11/50th.

The present appeal is filed by original Defendant Nos.9 and 10 who claim to be purchaser of the share of Defendant No.1 in the suit property. The Appellants had filed cross-objections in respect of the observations made by the learned Civil Judge as regard the validity of their sale deed. When the appeal was filed by the Respondents was dismissed, against which the Respondents/Plaintiffs have not filed any appeal, the Appellants had filed cross-objections.

5 Learned counsel for the Appellants advanced various contentions on the merits of the impugned order. He submitted that, apart from merits of the impugned order, the main ground of grievance is that their cross-objections have not been considered. Learned counsel for the Respondents/Plaintiffs tried to contend that there is no reference in the impugned decision to the cross-objections, perhaps because the Appellants have not pressed the cross-objections. Once the Court had given a declaration that the sale deed in favour of the Appellants is void and that the Appellants have sought equitable partition in their written statement, it does not stand to reason that the Appellants would have not pressed their cross-objections. Therefore, it appears that the appeal is disposed of by the learned District Judge without considering the cross-objections. By filing the

cross-objections, the Appellants had sought to get their substantive right adjudicated. Since the cross-objections were not considered at all, great prejudice is caused to the Appellants.

6 Considering this position, it was put to the learned counsel for the Respondents/Plaintiffs that, whether the appeal be admitted or remanded back to the District Court for reconsideration. The learned counsel for the Respondents/ Plaintiffs submitted that, in the facts and circumstances, remand would be more than appropriate and prays that the time bound schedule to be specified.

7 Accordingly, the question of law as framed is answered in favour of the Appellants.

8 The second appeal is allowed. The judgment and order dated 19 December 2011, is quashed and set aside. Regular Civil Appeal No.73 of 2003, stands restored to the file of the District Court, Sangli along with the cross-objections dated 8 July 2003.

9 In view of disposal of the appeal, the civil application is disposed of.

10 The learned District Judge will make an endeavour to dispose of the appeal as well as the cross-objections as early as possible, preferably within a period of six months from the date of receipt of

the writ of this Court. All contentions on merits are kept open.

(N. M. Jamdar, J.)