

Sequeira

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

***APPEAL FROM ORDER NO. 379 OF 2006
Along with
CIVIL APPLICATION NO. 471 OF 2006***

Shri Tukaram Ramchandra Vankhande
Age-57 years, Occ.Service & Agriculture,
R/o Vajrawad, Tal-Jath,
Dist.Sangli.

... Appellant
(Org. Plaintiff)

V/s.

Smt.Samabai Sitaram Marathe
- Deceased through heirs -

1a) Tukaram Nivrutti Kamble
Age 49 years, Occupation
Agriculture

1b) Baban Dadu Kamble
Age 42 years, Occupation
Agriculture

1c) Sou Shakuntala Dinkar Hankar
Age 54 years, Occupation
Household
Nos.1 a and 1b R/o Dhalewade
Tal.Kavathe Mahankal.
Dist. -Sangli.
No.1c At & Post Dongarsoni,
Tal. Tasgaon, Dist. Sangli.

2 Smt.Sarajabai Sitaram Marathe
Age 80 years, Occupation
Agriculture, R/o Chorocho,
Tal.Kavathe Mahankal.
Dist. -Sangli.

... Respondents.
(Org. Defendants)

Mr.N.J.Patil, for the Appellant / Applicant.
Mr.Amit Sale, for Respondent Nos.1a to 1c.

CORAM : N.M.Jamdar, J.
Friday, 22 July 2016.

Oral Judgment . :-

The Appellant challenges the Judgment and Order dated 27 March 2006 passed by District Judge, Sangli remanding the proceedings to the learned Civil Judge, Kavathe Mahankal.

2. The Appellant filed Regular Civil Suit No.70 of 1994 seeking relief of injunction against the Respondents. It was the case of the Appellant, that Appellant is in possession of the suit property and the Respondents were attempting to disturb the possession by manipulating the revenue record. The suit summons was served on the Respondents and the Respondents did not appear, in the suit. The Suit thereafter proceeded ex-parte. The learned Civil Judge, by the judgment and decree dated 6 March 1997 decreed the Suit and granted relief by order of permanent injunction restraining the Respondents from disturbing the possession of the Appellant. The Respondents thereafter filed an Appeal bearing No.15 of 2002 in the District Court, Sangli. The learned District Judge, by the impugned order remanded the proceedings to the learned Civil Judge for *de novo* consideration.

3. Mr.N.J.Patil, the learned counsel for the Appellant submitted

that the Respondents have not made out any case to demonstrate as to why they did not remain present inspite of the summons being sent and received by them and therefore it was not necessary to remand the proceedings. Mr.Amit Sale, learned counsel for the Respondents submitted that the learned District Judge has considered the evidence on record and found the case in favour of Respondents on merits.

4. I have gone through the judgment and orders passed by both the Courts. The learned Civil Judge decreed the Suit with one paragraph discussion where it is simply a reproduction of the case of the Appellant and stating that since there is no reply by the Respondents, Suit needs to be decreed. The learned District Judge has rightly found fault with this approach. The learned District Judge found that merely because the Respondents were not represented, the learned Civil Judge could not have mechanically decreed the Suit and it was the duty of the learned Civil Judge to ascertain whether what is produced on record was sufficient to grant decree in favour of the Appellant. This approach of the learned District Judge cannot be faulted with. The learned District Judge, apart from this position has discussed the evidence produced by the Appellant and did not find it satisfactory to grant a decree as it is. In the circumstances, I am not inclined to interfere with the judgment and order passed by the learned District Judge, remanding the proceedings to the learned Civil Judge.

5. In the Civil Application this Court has granted an interim order and has granted injunction in favour of the Appellant on the same terms as they are granted by the learned Civil Judge. I am of the opinion that since this relief is in continuation for last ten years, it is appropriate that it is continued till disposal of the Suit.

6. The Appeal from Order is disposed of. The Judgment and Order dated 27 March 2006 passed by the learned District Judge Sangli, is confirmed. The interim order passed on 3 October 2006 in Civil Application No.471 of 2006 will continue till the disposal of the Suit. The learned Civil Judge, will decide the Suit on its own merits, without being influenced by the observations made by the learned District Judge in the impugned Judgment and Order, so also by grant and continuation of interim order in this Appeal.

7. All contentions of the parties on merits are kept open. The parties shall appear before the learned Civil Judge, Kavathe – Mahankal, on 27 August 2016. Registry to communicate the order forthwith. The learned Civil Judge will dispose of the Suit within period of one year from the writ of this Court reaches it, since the Suit is of the year 1994.

8. The Civil Application stands disposed of.

(N.M.Jamdar, J.)