

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.613 OF 2016
WITH
CIVIL APPLICATION NO.3239 OF 2016
IN
FIRST APPEAL NO.613 OF 2016

Himmatrao D Pol Appellant.

V/s.

Pandurang Ananda patil and ors Respondents

Mr. S.S. Patwardhan, a/w Mr. Bhooshan R. Mandlik, for the Appellant.
Mr. Ketan V. Joshi, for the Respondent No.4.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH AUGUST, 2016.

P.C. :

1. With consent heard finally at the stage of admission itself as the issue involved herein is short one.

2. It is submitted by learned counsel for the appellant and respondents that the trial Court has framed issue No.2A after the evidence of both parties was closed; the matter was argued and kept for final judgment. No opportunity was given either to appellant or respondent herein to adduce evidence or advance their legal submissions in respect of the said issue.

3. It is stated that additional issue was framed on 5th March,

2015 and the judgment is pronounced on 27th March, 2015.

4. These being the admitted facts of the case, in my considered opinion, on framing of additional issue, it was essential and utmost necessary for the trial Court to give an opportunity of hearing to both parties to adduce their evidence and also to advance their legal submissions on the said issue. As no such opportunity is admittedly extended to both parties, it is necessary to remand the a matter back to the trial Court. Hence following order.

Order

- I) The appeal is allowed.
- II) The impugned order passed by the trial Court is quashed and set aside and the matter is remanded to the trial court for fresh hearing.
- III) Both parties to appear before the trial Court on or before 06.09.2016.
- IV) In view of disposal of appeal, Civil Application No.3239 of 2016 stands disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]