

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

WRIT PETITION NO.9142 OF 2014

Shri Shivaji Genubhau Bankar and Anr.] ... Petitioners

Versus

Shri Kisan Tukaram Bankar and Ors.] ...Respondents

Mr. Deepak Gupte for Petitioners.
None for Respondents.

Coram: N.M. Jamdar, J.

Dated: 08 September 2016

ORAL ORDER :

1. Notice was issued to the respondents on 23/07/2015. By order dated 23/07/2015, the respondents were put to notice that the petition will be disposed of finally at the stage of admission and if the respondents fail to appear, the Court will dispose of the petition on merits and interim relief staying the proceedings in the suit was granted. The Registry has endorsed that the respondents are served. None for the respondents.

2. The petitioners filed a suit bearing no.RCS No.244 of 1993 for partition and separate possession. The suit was dismissed on 29/06/2002. Thereafter an appeal was filed by the petitioners in the District Court, Pune. Pending the appeal, the petitioners sought an amendment of the plaint. The amendment was rejected by the learned District Judge. Against the order of rejection of the amendment, the petitioners filed Writ Petition No.6024 of 2006. The Writ Petition was disposed of on 03/12/2007 and the learned District Judge was directed to decide the appeal within time bound period. The Civil Appeal No.575 of 2002 was taken up for consideration by the learned District Judge and the learned District Judge allowed the appeal, set aside the Judgment and Decree passed by the Civil Judge Junior Division, Junnar and remanded the matter for fresh hearing.

3. None of the parties challenged the order of remand and participated in the proceedings before the learned Civil Judge. An application was taken out by the Defendant No.1A below Exh.240 that the petitioners be restricted to give evidence only in respect of the amended plaint. The learned Civil Judge found that in view of the order passed by this Court, the petitioners cannot lead evidence in respect of the other issues and will have to restrict themselves to the amended plaint and additional issues. By the impugned order dated 13/08/2009, the application was thus disposed of.

4. Heard the learned Counsel for the petitioners. The order passed by the learned Civil Judge is clearly erroneous. The learned District Judge, while remanding the matter, without any discussion, held that the matter is remanded for fresh hearing. There is neither any indication in the reasoning nor in the operative portion that the remand is a restricted remand. The learned District Judge simply set aside the order passed by the Civil Judge and remanded the matter for fresh hearing. This Court, while disposing of the Writ Petition, had restricted its inquiry only as to whether the amendment should be granted or not and did not put the parties to any restriction as sought to be deduced by the learned Civil Judge. In the circumstances, the impugned order is required to be quashed and set aside and is accordingly quashed and set aside. The petition is allowed in terms of prayer clause (b). No order as to costs.

(N. M. Jamdar, J.)