

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.719 OF 2015
WITH
CIVIL APPLICATION NO.617 OF 2015
WITH
CIVIL APPLICATION NO.391 OF 2016
IN
CIVIL REVISION APPLICATION NO.719 OF 2015

Abdul Hamid Haidar Kamaliwale ... Applicant
Vs.
Narayan Hari Kale (decd) through LRs Tarabai
Narayan Kale and others ... Respondents

Mr. Drupad S. Patil for Applicant.
Mr. Surel S. Shah for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 03RD OCTOBER, 2016.

P.C. :

Heard Mr. Patil, learned Counsel for applicant and Mr. Shah, learned Counsel for respondents at length. Rule. Mr. Shah waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, applicant, hereinafter referred to as 'defendant' has challenged the judgment and decree dated 17.07.2015 passed by the learned District Judge-3, Solapur in Regular Civil Appeal No.216 of 2001. By that order, the learned District Judge partly allowed the appeal preferred by the respondents, hereinafter referred to as 'plaintiffs' and quashed and set aside the judgment and decree dated 06.02.2001 passed by the learned 3rd Joint Civil Judge, Junior Division, Solapur in Regular Civil Suit No.876 of 1996. The learned District Judge also set aside the

judgment / findings dated 28.11.2013 passed / recorded in that Suit. Defendant is directed to handover possession of the suit property to the plaintiffs within two months from the date of the order among other directions.

3. One of the contentions raised by Mr. Patil is that the learned District Judge has not considered the effect of judgment and decree dated 02.04.1990 passed in Regular Civil Suit No.26 of 1983. That Suit was instituted by legal representatives of Arjun Kale for possession of 4 rooms which were forcibly occupied by heirs of Haribhau Kale and for injunction. He submitted that partition of C.T.S. No.8046 was effected between Haribhau Kale and Arjun Kale. C.T.S. No.8046 was divided in two parts viz. C.T.S. No.8046/A and 8046/B. C.T.S. No.8046/A admeasuring 352 sq.yards was allotted to Arjun Kale and C.T.S. No.8046/B admeasuring 117 sq.yards was allotted to Haribhau Kale. He submitted that the question is whether the suit property is situate in 8046/A or 8046/B. He invited my attention to the findings recorded by the learned District Judge in paragraph 19 and submitted that the learned District Judge did not consider the decision dated 02.04.1990 in R.C.S. No.26 of 1983.

4. Matter was heard at length on earlier occasion and was adjourned till today so as to enable Mr. Shah to take instructions as to whether respondents are agreeable for setting aside the impugned order by consent and restoring the appeal for deciding it afresh. Mr. Shah states that Mr. Harish Kumar Kale, son of respondent No.1D, is present in the Court. Upon taking instructions from him, he states that by consent, the impugned order may be set aside and after restoration of the appeal, the appellate Court may be directed to dispose of the appeal in a time bound manner. Learned Counsel appearing for the parties agree that they will

appear before the District Court on 17.10.2016 and for that purpose, no fresh notice be issued to them.

5. Mr. Patil submits that applicant has filed Civil Application No.391 of 2016 and Civil Application No.617 of 2015 under Order 41, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for leading additional evidence. He submits that applicant will file composite application in the pending appeal. Mr. Shah submits that in case such liberty is granted, respondents will file reply opposing the said application and the learned District Judge may be directed to dispose of such application along with the main appeal.

6. In view thereof, by consent of the parties, CRA is disposed of in the following terms:

- a. Impugned order dated 17.07.2015 passed by the learned District Judge-3, Solapur in Regular Civil Appeal No.216 of 2001 is set aside and Regular Civil Appeal No.216 of 2001 is restored to the file of the District Court;
- b. Parties agree that they will appear before the District Court on 17.10.2016 and for that purpose, no fresh notice be issued to them;
- c. Liberty is reserved to the applicant to file composite application under Order 41, Rule 27 of C.P.C. Such applications shall be filed on or before 17.10.2016 with advance copy to the other side. Grant of liberty shall not be construed as an expression of merits either way. Respondents will file their reply not later than one week from the receipt of the application. All contentions in that regard are expressly kept open. The learned District Judge shall decide the application at the time of hearing of the appeal;

d. The learned District Judge is requested to decide the appeal as expeditiously as possible, and preferably within 3 months from the date of the appearance of the parties;

e. All contentions of the parties on merits are expressly kept open;

f. Rule is made absolute in the aforesaid terms with no order as to costs.

7. In view of the disposal of C.R.A.No.719 of 2015, nothing survives in Civil Applications No.617 of 2015 and 391 of 2016 and the same are disposed of accordingly.

(R. G. KETKAR, J.)

Minal Parab