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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.397 OF 2012
WITH
CIVIL APPLICATION NO.1660 OF 2011

Shripati R.Mane, since deceased,
through His L.Rs. - Smt.Housabai S. Mane,
since deceased through Her L.Rs.

...Appellants

V/s.

Jagu C. Bhosale

...Respondent

Mr.Abhijit Kulkarni for the Appellants.

Mr.Anil Bagwe for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 17TH OCTOBER, 2016.

P.C. :-

1. By this appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned the judgment and decree dated 26th April, 2011 passed by the learned Additional Sessions Judge, Karad, allowing Regular Civil Appeal No.220 of 2000 filed by the original plaintiff.
2. It is not in dispute that the suit filed by the original defendants (Regular Civil Suit No.272 of 1988) was dismissed by the judgment and decree dated 3rd December, 1994.
3. Being aggrieved by the said judgment and decree dated

3rd December, 1994, the original plaintiff had filed Regular Civil Appeal No.220 of 2000. The original defendants had filed the counter claim, which also came to be dismissed.

4. A perusal of the judgment and decree passed by the first appellate Court indicates that the appellants herein were absent when the matter was heard. By the said judgment and decree dated 26th April, 2011, the first appellate Court has allowed Regular Civil Appeal No.220 of 2000 filed by the original plaintiff on merits and has set aside the judgment and decree passed by the learned trial Judge.

5. In my view, the first appellate Court could not have decided the matter on merit in the absence of one of the party. The impugned judgment and decree passed by the first appellate Court dated 26th April, 2011 thus deserves to be set aside and the appeal is required to be re-heard on merits.

6. I therefore, pass the following order :-

a). The impugned judgment and decree dated 26th April, 2011 passed by the first appellate Court in Regular Civil Appeal No.220 of 2000 is set aside. Regular Civil Appeal No.220 of 2000 is restored to file and shall be heard on its own merits by the first appellate Court. The first appellate Court shall make an endeavor to dispose of the Regular Civil Appeal No.220 of 2000 within six months from the date of communication of this order. It is made clear that the first appellate

Court shall decide the matter afresh without being influenced by the observations made and the conclusions drawn in the said judgment and decree dated 26th April, 2011.

b). Both the parties shall co-operate with each other and also with the learned first appellate Court in disposal of the Regular Civil Appeal No.220 of 2000 expeditiously.

c). The appellants shall pay the costs of Rs.10,000/- to the respondent within two weeks from today.

7. The second appeal is disposed of in aforesaid terms. No order order as to costs.

8. In view of disposal of the second appeal, Civil Application No.1660 of 2011 does not survive and is accordingly disposed of.

9. The office is directed to transmit the record and proceedings to the first appellate Court expeditiously.

(R.D. DHANUKA, J.)