

Mr. Uday B. Nighot for Petitioner.
Mr. T. D. Deshmukh for Respondents No.1A, 1B, 1C, 1D, 1F, 1E, 1G and 2A.

P.C. :

Heard Mr. Nighot, learned Counsel for petitioner and Mr. Deshmukh, learned Counsel for respondents No.1A, 1B, 1C, 1D, 1F, 1E, 1G and 2A at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant No.9D has challenged the judgment and order dated 03.09.2015 passed by the learned Ad-hoc District Judge-1, Khed-Rajgurunagar, Pune below exhibit-69 in Civil Appeal No.260 of 2014. By that order, the learned District Judge rejected the application made by the defendant No.9D for setting aside the judgment and decree dated 10.02.2012 passed by the learned Joint Civil Judge, Junior Division, Junnar, District Pune passed in Regular Civil Suit No.143 of 1986 and remanding the case to the trial Court.

3. Mr. Nighot reiterated the submissions that were advanced before the learned District Judge. He submitted that initially, the learned trial Judge passed “No W.S. Order” against defendants No.8 to 10. The said order was set aside and defendants were permitted to file written statement. Accordingly, defendants filed written statement some time in 2008. Issues were already framed on 19.09.2000 and additional issues were framed on 09.01.2006. After filing of written statement by defendants, the learned trial Judge did not recast

the issues considering the defence raised by the defendants. He further submitted that defendant No.9D was also not given a opportunity to adduce evidence. He further submitted that after closing evidence by the plaintiffs, they submitted documents without permission of the learned trial Judge. These documents could not have been considered by the learned trial Judge.

4. On the other hand, Mr. Deshmukh submitted that prayer for remand cannot be made at interlocutory stage. While deciding the Appeal, the Court may consider, in a given set of facts and circumstances of the case, to remand the matter. That could be done only while deciding the Appeal and not at the interlocutory stage. He invited my attention to paragraph 5 of the impugned order where the learned District Judge recorded that the matter is pending for final argument. The matter was thereafter fixed for passing dismissal order and at that stage, defendant No.9D filed application for remanding the matter. Defendant No.9D wants to prolong the matter and therefore, he has filed such type of application.

5. Order 41, Rule 23 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') provides for remand of the case by the appellate Court when a Suit is disposed of on a preliminary point. Order 41, Rule 23-A deals with a situation where the Suit is disposed of otherwise than on a preliminary point. In the present case, it is not in dispute that the Suit is disposed of by deciding all the points and is not disposed of only on a preliminary point. Order 41, Rule 23-A reads thus,

“23-A. Remand in other cases. - Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23.”

6. Perusal of Rule 23-A clearly shows that when the appellate Court is reversing the decree in appeal, it may consider a re-trial and can exercise power of remand under Order 41, Rule 23. In view therefore, in my opinion, the application made by the defendant No.9D at interlocutory stage for

remanding the matter, itself, was misconceived. The learned District Judge was, therefore, justified in rejecting the application more so in the light of the observations made in paragraph 5 of the impugned order. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. The learned District Judge is requested to decide the appeal on the basis of evidence on record and in accordance with law, uninfluenced by the observations made in the impugned order and in this order. All the contentions of the parties on merits are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab