

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 149 OF 2014
WITH
CIVIL APPLICATION NO. 1829 OF 2014**

1. Shri Pradeep Khandu Kokani,
Age: 36 years, Occu: Agri. & Business,
R/o Malwan,
Tal. Navapur, Dist. Nandurbar
 2. Shri Bakaram Shamu Kokani,
Age: 62 years, Occu: Agri. & Business,
R/o Mendipada,
Tal. Navapur, Dist. Nandurbar
 3. Sau Taibai w/o Bakaram Kokani,
Age: 55 years, Occu: Household,
R/o Mendipada,
Tal. Navapur, Dist. Nandurbar
- ..APPELLANTS

VERSUS

Smt Savitribai w/o Khandu Kokani,
Age: 77 years, Occu: Agriculture,
R/o Malwan,
Tal. Navapur, Dist. Nandurbar
C/o Shri Saiman Kokani,
R/o Malwan,
Tal. Navapur, Dist. Nandurbar

..RESPONDENT

Mr D. P. Palodkar, Advocate for appellants;
Mr Vijay Patil, Advocate holding for Mr J. I. Vasave, Advocate for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 5th June, 2017

ORAL ORDER

Regular Civil Suit No. 24 of 2000 came to be filed before Civil Judge
Junior Division, Nandurbar, seeking relief of declaration that the adoption
deed, which is subject-matter of the suit, is null and void. A prayer for

(2)

injunction, in alternate to recovery of possession, was also made. The suit came to be dismissed by judgment and decree dated 5th October, 2007, which was carried in Regular Civil Appeal No. 26 of 2007. The said appeal came to be allowed by judgment and decree dated 17th October, 2013, passed by the learned District Judge-2, Nandurbar. As such, the present second appeal.

2. Amongst other, the substantial question of law that is sought to be canvassed is, the judgment and decree passed by the appellate Court is not sustainable for the reason that the same was delivered on 17th October, 2013, whereas the last hearing in the matter took place on 26th September, 2012. My attention is invited to the Roznama dated 17th October, 2013, which has reference to various dates on which the matter was heard finally by the appellate Court. According to the learned Counsel for the appellants, since the judgment is delivered almost after a period of one year from the date of conclusion of arguments, the matter is required to be remanded back to the appellate Court for fresh hearing and decision according to law. He would draw support from the judgment of the Apex Court in the matter of **Anil Rai Vs. State of Bihar**, reported in **(2001) 7 Supreme Court Cases 318**, particularly observations made in paragraph No. 8 of the said judgment which reads thus:

“The intention of the legislature regarding pronouncement of judgments can be inferred from the provisions of the Code of Criminal Procedure. Sub-section (1) of Section 353 of the Code provides that the judgment in every trial in any criminal

(3)

court of original jurisdiction, shall be pronounced in open court immediately after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The words “some subsequent time” mentioned in Section 353 contemplate the passing of the judgment without undue delay, as delay in the pronouncement of judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks and not beyond that time in any case. The pronouncement of judgments in the civil case should not be permitted to go beyond two months.”

3. In addition to above, a submission is made that the contentions as were canvassed before the learned first appellate Court were not considered or reflected in the judgment and as such, the judgment lacks the requirements under Sections 96 and 107 read with Order XX, Rule 1 of the Code of Civil Procedure. Reliance is placed on the judgment of Apex Court in the matter of **Santosh Hazari Vs. Purushottam Tiwari (deceased) by Lrs.** reported in **(2001) 3 Supreme Court Cases 179.**

4. Per contra, the learned Counsel for the respondent – original plaintiff would urge that the delayed delivery of the judgment by the first appellate Court is not in dispute. However, he would urge that for delivering the judgment late in point of time after conclusion of the arguments is, for the reasons as are narrated in the Roznama dated 17th October, 2013. He would then urge that the judgment delivered is detailed one and for interference therein, a case has to be made out on merits. He would then urge that the appeal needs to be dismissed.

(4)

5. What is noted from the Roznama of the first appellate Court that the matter was heard for the period between 4th September, 2012 and 26th September, 2012, almost on six dates. It was expected of the learned appellate Court to deliver judgment in accordance with the provisions of Order XX Rule 1 of the Code of Civil Procedure and also after considering the submissions made in the backdrop of the provisions of Section 96 read with Section 107 of the Code of Civil Procedure. Appropriate support to that effect can be drawn from the judgment of the Apex Court in the matter of Santosh Hazari (supra). What could be noticed from the judgment impugned is, that the first appellate Court has failed to consider the contentions canvassed before it by the respective parties. Apart from above, it is required to be noted that the judgment is delivered almost after a period of one year from the date of conclusion of hearing of the appeal. In my opinion, such procedure is not identified under any of the provisions of the Code of Civil Procedure or in any statute book. The Apex Court in the matter of Anil Rai (supra) has termed that the act on the part of the Courts in not delivering the judgments within a stipulated time amounts to denial of the principles of natural justice, i.e. denial of opportunity of hearing also.

6. In the backdrop of the above, in my opinion, a case for remand is made out.

(5)

7. In view thereof, the judgment and decree dated 17th October, 2013, rendered by learned District Judge-2, Nandurbar, in Regular Civil Appeal No. 26 of 2007, is hereby set aside. The matter is remitted back to the learned first appellate Court with a direction to decide the appeal afresh according to law, taking into account the observations made herein above.

The parties hereto agree that they shall appear before the first appellate Court on 27th June, 2017.

Registry to ensure that the record and proceedings reaches the learned District Judge-2, Nandurbar, in any case, before 23rd June, 2017.

The parties hereto agree that they shall not seek any adjournment in the matter and shall expeditiously work out the matter and shall also file their written notes of arguments before the learned first appellate Court.

The first appellate Court shall make an endeavour to decide the appeal within a period of three months from 27th June, 2017.

Second Appeal stands partly allowed in above terms. In the circumstances, there shall be no order as to costs.

In view of above, Civil Application No.1829 of 2014 does not survive and stands disposed of accordingly.

(N.W. SAMBRE, J.)

amj