

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

**SECOND APPEAL NO. 515 OF 2012**

Baba Shankar Gosavi,  
Age : 75 years, Occu. Agri.,  
through its G.P.A.  
Sudam s/o Baba Giri Gosavi,  
Age : 45 years, Occu. Agri.,  
R/o Ukkadgaon, Tq. Shrigonda,  
District Ahmednagar

**APPELLANT/  
ORIG. PLAINTIFF**

**VERSUS**

1. Shantabai w/o Dagadugir Gosavi,  
Age : 75 years, Occu. Household
2. Savita Dagadugir Gosavi,  
Age : 60 years, Occu. Household,  
Both r/o Ukkadgaon, Tq. Shrigonda, District Ahmednagar

**RESPONDENTS/  
ORIG. DEFENDANTS**

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Mr. V.S. Bedre, Advocate for the Appellant  
Mr. V.P. Latange, Advocate for respondent Nos. 1 and 2

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**CORAM : SANGITRAO S. PATIL, J.**

**DATE : 19th JULY, 2017**

**ORAL ORDER :**

Heard the learned counsel for the parties.

2. The appellant has challenged the judgment and decree dated 4<sup>th</sup> January, 2012 passed in Regular Civil Appeal No. 5 of 2004 whereby the judgment and decree dated 7<sup>th</sup> November, 2003 passed in Regular Civil Suit No.

92 of 1999, dismissing the suit for declaration of title and recovery of possession, came to be confirmed.

3. The learned counsel for the appellant submits that the appellant filed certain public documents with list (Exh-14), which were very much relevant for the just decision of the controversy between the parties. He submits that as per the order dated 23<sup>rd</sup> March, 1993 passed in R.T.S. Revision No. 5 of 1992, the Sub Divisional Officer has cancelled Mutation Entry Nos. 589 and 606 on the basis of which the respondents claimed title to the suit land. All these documents have not been considered by the First Appellate Court. Therefore, prejudice has been caused to the appellant and he has been subjected to injustice. He, therefore, submits that the impugned judgment and decree of the First Appellate Court be quashed and set aside and the appeal may be remanded with a direction to decide it afresh after considering the above referred documents.

4. The learned counsel for the respondents tried to justify the impugned judgment of the First Appellate Court on the basis of the observations in respect of the previous suit bearing Regular Civil Suit No. 186 of 1994. He submits that the First Appellate Court has

rightly confirmed the decree passed by the Trial Court.

5. It may be noted that in Regular Civil Suit No. 186 of 1994, relief of interim injunction was rejected by the Trial Court. The appellant preferred M.C.A. No. 45 of 1998. Thereafter, he withdrew the said suit with liberty to file fresh one on the same cause of action. If that be so, the order rejecting the application for temporary injunction would merge into the final order whereby the suit was allowed to be withdrawn and would not have any adverse effect on the right of the appellant in the subsequent suit i.e. the present suit bearing Regular Civil Suit No. 92 of 1999 in claiming the necessary reliefs. As such, the previous litigation would have no relevance for deciding the present suit.

6. The appellant has filed certified copies of the orders passed by the Revenue Authorities and certain public documents to substantiate his claim in respect of the suit land. Indeed, the said documents have not at all been considered by the First Appellate Court. It was incumbent on the part of the learned Judge of the First Appellate Court to consider all these documents for final and effective adjudication of the controversy between the parties. Non-consideration of the said

documents would certainly cause prejudice to the appellant. If that be so, the impugned judgment and decree passed by the First Appellate Court would not be sustainable. It will have to be quashed and set aside and the appeal will have to be remanded with a direction to the First Appellate Court to decide it afresh according to law after considering the documents produced on record. Hence, I pass the following order:-

**O R D E R**

- (i) The judgment and decree dated 4<sup>th</sup> January, 2012, passed in Regular Civil Appeal No. 5 of 2004 are quashed and set aside.
- (ii) The appeal is remanded to the First Appellate Court for deciding it afresh according to law.
- (iii) All the points are kept open.
- (iv) The parties shall appear before the First Appellate Court on 16<sup>th</sup> August, 2017 positively.
- (v) The Second Appeal is accordingly disposed of.
- (vi) In view of disposal of the Second Appeal, Civil Application No. 5252/2015 does not survive and stands

disposed of.

(vi) The record and proceedings be sent back to the First Appellate Court immediately.

**[SANGITRAO S. PATIL]**  
**JUDGE**

npj/sa515-2012