

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.4284 OF 2016

- 1) Shri Lotan Dagadu Badgujar
Age: 60 years, Occu.: Agriculture,
- 2) Sau Jijabai Lotan Badgujar
Age: 53 years, Occu.: Household

Both residents of at Post Kapadane,
Taluka and District Dhule

= **APPELLANTS**
(Org. Opponents)

VERSUS

- 1) Sau Ranjana Dattatraya Badgujar
Age: 48 years, Occu.: Agri
and Household
- 2) Miss Saloni Yogesh Badgujar
Age: 7 years, Occu.: Nil,
- 3) Master Pratik Yogesh Badgujar
Age: 4 years, Occu.: Nil

All residents of At village Undirkhede,
Taluka Parola, District Jalgaon

= **RESPONDENTS**
(Org. Applicants)

Mr. Mukul S.Kulkarni, Advocate for Appellants;
Mr. P.B. Patil, Advocate for Respondents.

CORAM : P.R.BORA, J.

DATE : 28th June, 2017.

ORAL JUDGMENT :

- 1) Heard finally with consent of the
learned Counsel appearing for the parties.

2) The appellants have challenged the order passed by District Judge-1, Amalner on 11th September, 2015 in Civil Misc. Application No. 20/2014. Vide the said order, the petition filed by the present respondents has been allowed and respondent No.1 has been appointed as Guardian of minor children of deceased Yogesh and Ashwini Badgujar.

3) The learned Counsel for the appellants submitted that the impugned order has been passed without giving any opportunity of hearing to the present appellants and is as much as an ex parte order. The learned Counsel submitted that no notice or summons of the aforesaid application was served upon the appellants. The learned Counsel further submitted that at the relevant time, the appellants were under-trial prisoners in District Prison, Dhule. The learned Counsel invited my attention to the bailiff report, which is at page 19 of the paper book. The learned Counsel submitted that though the bailiff has reported that present appellant No.1 refused to

accept the summons, in fact, no such notice has been ever served or attempted to be served on appellant No.1. The learned Counsel submitted that thereafter public notice was also issued and it has been held by the court below that the appellants were duly served and did not appear in the matter. The learned Counsel submitted that since the appellants did not get any opportunity to contest the matter, the matter be remitted back to the court below for deciding it afresh by giving due opportunity to the appellants to put forth their case.

4) Shri Patil, learned Counsel appearing for the respondents, resisted the contentions raised on behalf of the appellants. The learned Counsel submitted that the bailiff report is quite clear that the appellants have refused to accept the notice and in such circumstances, no fault can be found with the observations made by the court below that despite due notice the appellants did not appear in the matter and did not contest the said matter. The learned

Counsel, therefore, prayed for dismissal of the appeal.

5) I have carefully perused the record. I have also perused the report of bailiff, which is at page 19 of the paper book. The report so submitted apparently appears to be unsustainable in view of the fact that when the appellants were in jail at the relevant time, an endorsement must have been on the said report by the jail authorities. In absence of any such endorsement on the said report, the said report apparently cannot be accepted. The fact that the appellants were in jail at the relevant time has not been disputed by the respondents. It is thus evident that when the appellants were in jail, the matter was taken for hearing and without giving any opportunity to the appellants, the same has been finally decided.

6) In view of the above, appropriate course will be to set aside the order passed by the District Judge and to remit back the matter for

deciding it afresh on its own merits by the said Court by giving due opportunity to the parties to the said proceedings. Hence, the following order, -

ORDER

- i) The order passed by District Judge-1, Amalner on 11th September, 2015 in Civil Misc. Application No.20/2014 is quashed and set aside and the matter is remitted back to the trial court for deciding it afresh on its own merits by giving due opportunities to the parties to the said proceeding;
- ii) The parties to appear before the court below on **10th July, 2017**;
- iii) The First Appeal stands allowed in the aforesaid terms.
- iv) The record and proceedings be forthwith sent back to the trial court.

(P.R.BORA)
JUDGE

bdv/