

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

928 CIVIL APPLICATION NO. 8711 OF 2017
IN FA/3047/2016 WITH CA/3328/1996 IN FA/3047/2016 WITH
CA/3312/2014 IN FA/3047/2016

SAMASTA LAD VANJARI SAMAJ RAM MANDIR SANSTHA, MEHRUN AND
ORS

VERSUS

WAMAN KISAN SANAP (L.RS.) KASHINATH AND ORS

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Advocate for Applicants : Mr. Vikramsingh T. Chaudhary
Advocate for Respondents No. 1A to 3B : Mr. S.P. Shah h/f
Mr. P.M. Shah

...

CORAM : K.K. SONAWANE, J.

DATED : 23RD NOVEMBER, 2017.

Order :-

Heard the learned counsel for applicants and respondents No. 1-A to 3-B. Rest of the respondents remained absent.

2. The learned counsel for the applicants contends that the impugned order for converting the Second Appeal No. 295 of 1996 into First Appeal no. 3047 of 2016 is erroneous, illegal and not in proper perspective of the ratio laid down in the case of ***Prabhakar Sambhu Chaudhary and another Vs. Laxman Baban Mali and others*** reported in ***2016 DGLS (Bom.) 22***. It was held in this judicial pronouncement that the proceeding of appeal to the High Court under Section 72(4) of the Bombay Public Trust Act (for short "BP Act") would be subject to any limitation as contemplated under Section 100 of the Civil Procedure Code (for short "C.P.C."). The High Court has jurisdiction to re-appraise the fact and question of law involved and can pass the order to reverse, modify the decision or remand the matter to the

Lower Forum for appropriate decision. But, in the present matter in hand, the Second Appeal No. 295 of 1996 was filed against the Judgment and Decree passed by the District Judge, Jalgaon in Civil Appeal No. 223 of 1994. It was arising from the decree of Civil Court in R.C.S. No. 03 of 1971. Therefore, the appeal was rightly registered as Second Appeal under Section 100 of the C.P.C. But, erroneously it was re-registered as First Appeal following impugned order of this Court dated 19-07-2016.

3. The learned counsel Mr. Shah fairly conceded about the factual aspect as mentioned above and submits that the application be allowed for restoration of appeal to its original stage.

4. Having considered the submissions on behalf of both sides, I find force in the contentions put forth on behalf of applicants. The proceedings of present appeal is arising from the original decree passed by the Assistant Judge, Jalgaon in Regular Civil Suit No. 03 of 1971. Thereafter, First Appeal No. 738 of 1989 came to be filed before this Court (Coram: N.P. Chapalgaonkar, J.). But, it was held that the appeal before the District Judge is maintainable instead of First Appeal before the High Court. Accordingly, the matter was relegated back to the District Court, Jalgaon and it was re-numbered as Regular Civil Appeal No. 223 of 1994. However, the learned District Judge dismissed the Regular Civil Appeal No. 223 of 1994 and against the impugned Judgment and order, the applicants preferred the present Second Appeal No. 295 of 1996. Obviously, it is evident from the factual score that, the ratio delineated by the Full Bench of this Court in the

aforesaid Prabhakar Chaudhari's Case is not applicable to the factual aspect of the matter in hand. The appeal is required to be dealt with under Section 100 of the C.P.C. instead of its registration as First Appeal under Section 96 of C.P.C. Hence, the application deserves to be allowed.

5. Accordingly, application stands allowed. The impugned order dated 19-07-2016 is hereby modified by deleting the proceeding of Second Appeal No. 295 of 1996 from the list of appeal to be converted to make them as first appeal. The proceeding of Second Appeal No. 295 of 1996 be restored to its original stage and its registration being First Appeal No.3047 of 2016 be treated as cancelled.

6. The Civil Application No. 8711 of 2017 is hereby allowed in above terms and stands disposed of.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.