

(1)

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

**SECOND APPEAL NO. 873 OF 2009
WITH
CIVIL APPLICATION NO.12598 OF 2009**

1. Devidas Jyoti Dalvi,
Age: 51 years, Occu: Barber

2. Kumar Jyoti Dalvi,
Age: 49 years, Occu: Barber

3. Shivanand @ Nanda Jyoti Dalvi,
Age: 45 years, Occu: Barber,

All R/o. Deokurli, Taluka Tuljapur,
Dist. Osmanabad

..APPELLANTS
(Orig.Pltfss.)

VERSUS

1. Digambar Nivrutti Jadhav,
Age: 65 years, Occu: Agriculture,
R/o Deokurli, Tal Tuljapur,
Dist. Osmanabad

2. Godabai Jyoti Dalvi,
Died, thr. L.rs.
(already on record as appellant No.1,
2 and 3 & Resp. Nos. 3A to 3C)

3. Prakash Jyoti Dalvi,
since deceased, thr. L.Rs.

3A. Nilavatibai Prakash Dalvi,
Age: 35 years, Occu: Household

3B. Ranjana Prakash Dalvi,
Age: 35 years, Occu: Education

3C. Ganesh Prakash Dalvi,
Age: 19 years, Occu: Education

Respondent Nos. 3A to 3C,
R/o. Papnas Galli,
Tuljapur, Dist. Osmanabad

..RESPONDENTS
(Orig.Defts.)

(2)

Mr S. P. Shah, Advocate for appellants;
Mr V. B. Deshmukh, Advocate for respondent No.1;
Mr A. N. Sikchi, Advocate for respondent Nos.3A & 3C

CORAM : NITIN W. SAMBRE, J.

DATE : 30th October, 2017

ORAL ORDER

Regular Civil Suit No.73 of 1990 came to be instituted by the present appellants-original plaintiffs for partition and separate possession, as according to them the sale of the property viz. 8 Acres 3 Are land on 27th January, 1975 and 12 Acres 11 Are land on 20th October, 1978, in favour of respondent No.1, was not for legal necessity.

2. The aforesaid suit came to be decreed vide judgment and order dated 29th December, 1994, passed by 2nd Joint Civil Judge Junior Division, Tuljapur.

3. Feeling aggrieved by the aforesaid judgment and decree, respondent No.1-original defendant No.1 preferred Regular Civil Appeal No.167 of 1997, which came to be allowed by a cryptic judgment and order dated 5th August, 2009, passed by District Judge-2, Osmanabad. Thus, the present second appeal.

4. Heard respective learned Counsel for sometime.

(3)

5. The substantial question of law that needs consideration in the present second appeal, in my opinion is, whether the lower appellate Court, while deciding the appeal has acted in tune with the requirements provided by the Apex Court, in the matter of **Santosh Hazari vs. Purushottam Tiwari deceased by L.Rs.** reported in **2001 (2) Mh.L.J. 786.**

6. It could be noticed from the very language employed in the judgment of the appellate Court, that the appellate Court has not gone into details and appreciated the evidence in the backdrop of pleadings of the respective parties. The said proposition is not disputed by the learned Counsel appearing on behalf of respondents, who concede for remanding the appeal to the lower appellate Court for deciding it afresh.

7. In view thereof, in my opinion, it will be appropriate to set aside the judgment and decree passed by District Judge-2, Osmanabad on 5th August, 2009, in Regular Civil Appeal No.167 of 1997 and is accordingly set aside.

Regular Civil Appeal 167 of 1997 stands restored to the file of learned District Judge-2, Osmanabad, which shall be decided afresh in accordance with law, keeping in mind the foregoing observations.

Parties hereto agree that they shall appear before learned District Judge-2, Osmanabad on 27th November, 2017, with written notes of arguments and shall not seek any further adjournment.

(4)

The lower appellate Court shall decide the appeal expeditiously and in any case, within a period of two months from the date of appearance of the parties.

Second Appeal stands partly allowed in above terms.

In view thereof, pending Civil Application does not survive and stands disposed of accordingly.

(NITIN W. SAMBRE, J.)

amj