

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.599 OF 1991

Shankargir Khemgir Gosavi
(since deceased through his
legal heirs and representatives)
1A Smt. Sitabai Shankargir Gosavi
(since deceased)
1B Shri Bhagwan Shankargir Gosavi & Ors. ... Appellants

vs.

Shri Hari Mhasu Bhoi & Ors. ... Respondents

Mr. Sachin Dhakephalkar i/b Mr. P.K. Dhakephalkar for the Appellants.
Ms. Avanti Inamdar i/b Mr. R.N. Gite for the Respondent Nos.1AB,
1AC,1B, 1C, 1F, 1H and 1E.

Coram : **A.A. Sayed, J.**
Dated : 29 November 2017

ORDER:

1 Heard learned Counsel for the parties. Learned Counsel for the Appellants has tendered a copy of the common judgment and order dated 4 September 2008 of learned Single Judge of this Court (Coram: J.H. Bhatia, J.) in three Appeals viz. Second Appeal Nos.600 of 1991, 601 of 1991 and 602 of 1991. By the said judgment and order the learned Single Judge of this Court set aside the impugned judgment and order of the first Appellate Court and restored the judgment and decree of the Trial Court in Regular Civil Suit Nos.151 of 1978, 152 of 1978 and 153 of 1978. Learned Counsel for the Appellants has also

tendered the judgment and order dated 22 March 2013 of the learned Single Judge of this Court (Coram: R.G. Ketkar,J.). Mr. R.G. Ketkar, J. following the order of Mr. J.H. Bhatia, J. has allowed the Second Appeal No.603 of 1991 and set aside the impugned judgment and order of the first Appellate Court and restored the judgment and order of the Trial Court in Regular Civil Suit No.150 of 1978.

2 Learned Counsel for the Appellants submitted that the judgments and orders dated 4 September 2008 and 22 March 2013 passed by this Court allowed the Second Appeals and set aside the judgments and orders of the first Appellate Court and decreed the suits instituted by the Plaintiffs and for the reasons stated in aforesaid judgments, this Second Appeal also deserves to be allowed. Learned Counsel for the Appellants has pointed out that in all the aforesaid matters including the present matter identical issue is involved common evidence was recorded.

3 Learned Counsel for the Respondents does not dispute that the present Second Appeal would also have to be allowed in view of the judgments and orders dated 4 September 2008 and 22 March 2013. Accordingly, for the reasons stated in the judgments dated 4 September 2008 and 22 March 2013 the present Second Appeal is allowed. The judgment and order dated 31 July 1991 passed by the Additional District and Sessions Judge,

Nashik in Civil Appeal No.269 of 1986 is quashed and set aside and the judgment and decree dated 29 April 1986 passed by the Civil Judge, Junior Division, Pimpalgaon Baswant, Nashik in Regular Civil Suit No.149 of 1978 is restored.

4 The Second Appeal is disposed of accordingly. There shall be no order as to costs.

(A.A. Sayed, J.)

katkam