

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

WRIT PETITION NO.6877 OF 2015

Girish Shrikrishna Sule & anr. ... Petitioners

Vs.

Union of India & anr. ... Respondents

Mr.Pankaj Savant, Senior Advocate with Mr.Yahya Goghari, Levi Rubens and Yohaana rubens i/b Vigil Juris for the Petitioners

Mr.Suresh Kumar with R.P. Ojha for Resp. No.1

Ms.Jyoti Jadhav, AGP, for State/Resp. No.2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 13, 2017**

P.C. :

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.
2. In this Writ Petition, the order dated 26.3.2015 in Notice of Motion No.3665 of 2014 in S.C. Suit No.4150 of 2005 is under challenge. By way of Notice of Motion, the present petitioners, i.e., the defendants, prayed that the measurements of survey No.103A and 103A(Part) is to be conducted by the DILR, Mumbai Suburban District. The said application was dismissed. The matter was

heard partly. However, during the course of hearing, it was found that this matter has a checkered history. The Suit No.4150 of 2005 was once decreed and in the First Appeal, at the time of hearing, the plaintiffs i.e., the respondents raised the point of *res judicata* in view of the judgment and decree dated 8.4.1992 and 9.4.1992 passed in SC Suit No.1448 of 1976. Then, the judgment and order passed by the trial Court was set aside and the Suit was remanded with directions that the issue of *res judicata* has to be framed. Now the issue is framed, during the pendency of the suit.

3. Learned Counsel for the Respondent / Union of India has submitted that in the said judgment of the Bombay High Court, the High Court has fixed the location of the land at 60 acres 38 ares which is on the west side of Tansa pipeline. He has further submitted that this fact is referred to in the earlier judgment and decree passed in the first round of litigation. However, it appears that this judgment and decree passed by the Bombay High Court on which the issue of *res judicata* is framed, was not pointed out at the hearing of the Notice of Motion.

4. The learned Counsel for the respondent fairly conceded to this situation.

5. Therefore, I am of the view that these submissions are to be made before the trial Court and hence, it is remanded to the trial Court. Accordingly, the order dated 26.3.2015 is hereby set aside and the matter is remanded to the trial Court so that the petitioners can meet the issue of *res judicata* before the trial Court.

6. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)