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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.35 OF 2017

1. Ganesh s/o Wamanrao Deshmukh APPELLANTS
Age – 60 years, Occ – Agriculture
R/o Taroda (Bk.)
Taluka and District – Nanded

2. Nilkanth Balasaheb Deshmukh
Age – 50 years, Occ – Agriculture
R/o As above

VERSUS

1. Sunil s/o Ramchandra Wankhede RESPONDENTS
Age – 45 years, Occ – Agriculture
R/o Ardhapur, Taluka – Ardhapur
District – Nanded

2. Vasant Gangaram Patre
Age – Major, Occ – Agriculture
R/o Ardhapur, Taluka – Ardhapur
District – Nanded

3. Nilkanthrao s/o Gunajirao Shirphule
Age – Major, Occ – Service
R/o Sharda Bhuwan High School,
Near Yashwant College,
Nanded

4. Sau. Suman Nilkanthrao Shirphule (DISMISSED)
Age – Major, Occ – Service
R/o Zilla Parishad School,
Near G. R. Joshi Hospital,
Vazirabad, Nanded

5. Keshavrao Wamanrao Deshmukh
Age – 60 years, Occ – Agriculture
R/o New Mondha, Nanded
C/o Shivajirao Rangrao Deshmukh
Adat Shop, New Mondha
Nanded

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Mr. Swapnil S. Rathi, Advocate for the appellants
Mr. A. S. Deshmukh, Advocate for respondent No.1
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 22nd MARCH, 2018

ORAL JUDGMENT :

1. Heard learned advocates for the appearing parties.
2. Learned advocate for the appellants – original defendants No. 5 and 6 in Regular Civil Suit No.716 of 1989, submits that perusal of the judgment under challenge would evince primarily that order of remand had been passed on the premise that since appellants herein – original defendants No. 5 and 6 being not party to the measurements carried out by the cadastral surveyor, the procedure by cadastral surveyor is rendered deficient and not legal and under the circumstances, remand has been ordered to measure lands gut No. 36 and 40.
3. Mr. Rathi, learned advocate appearing for the appellants submits that as a matter of fact, the appellants are transferees stepped into the shoes of original defendants No. 2 and 3. After first remand by the appellate court, the lands concerned have been got measured by the cadastral surveyor in the presence of

original plaintiffs and original defendants No.2 and 3 – the appellants' predecessors. No prejudice has been claimed by the parties hereto on account of measurement being without notice to present appellants – defendants No.5 and 6. In the circumstances, the purpose for which the order of remand – impugned in the present matter, which is a second one and passed in second round of litigation at appellate stage, would not be necessary in the facts and circumstances of the case and the appeal will have to be proceeded with, with reference to the evidence on record and on its own merits.

4. Learned advocate for respondent No.1 – original plaintiff has no particular objection to the request being made at the instance of the appellants.

5. In view of aforesaid, at the risk and peril of the parties, appeal from order stands allowed. Impugned order dated 27th February, 2017 passed by District Judge – 5, Nanded in Regular Civil Appeal No. 8 of 2007 is quashed and set aside. Regular Civil Appeal No. 8 of 2007 pending in the court of District Judge, Nanded be proceeded with from the stage it has reached before the impugned order had been passed.

6. In view of aforesaid and the regular civil appeal is of 2007,

it would be expedient that the appellate court proceeds with the appeal expeditiously and dispose of the same as early as possible, preferably within a period of six months from the date of receipt of writ of this order.

7. In view of disposal of appeal from order, civil application No. 431 of 2018 does not survive and stands disposed of accordingly.

[SUNIL P. DESHMUKH, J.]

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