

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 WRIT PETITION NO. 8106 OF 2017

VASANT BHAGWANTRAO ULAGADE AND OTHERS
VERSUS
MADHAVRAO YESHWANT ULAGADE AND OTHERS

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Advocate for Petitioners : Mr. Awale Girish L.
Advocate for Respondents : Mr. Santosh B. Gastgar

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CORAM : V. K. JADHAV, J.
DATED : 10th APRIL, 2018

PER COURT:-

1. Heard finally with consent of the parties at admission stage.
2. The petitioners-original plaintiffs have instituted Regular Civil Suit No. 119 of 2015 for declaration and decree of perpetual injunction. Pending the suit, the petitioners have also filed an application Exh.5 for issuance of order of temporary injunction. The respondents-original defendants have strongly resisted the suit as well as application Exh.5. The trial court by order dated 24.10.2016 allowed the application Exh.5 and accordingly restrained the respondents-defendants temporarily from causing obstruction in the plaintiffs' possession over the suit land till final decision of the suit. Being aggrieved by the same, the respondents-defendants have preferred Misc. Civil appeal No. 85 of 2016 and the learned District Judge-1, Latur, by judgment and order dated 2.5.2017 partly allowed

the appeal. Quashed and set aside the order dated 24.10.2016 passed by the trial court below Exh.5, and remanded the matter back to the trial court for deciding application Exh.5 afresh. Hence, this writ petition.

3. Learned counsel for the petitioners-original plaintiffs submits that in terms of provisions of Order XLIII of C.P.C. the learned District Judge is not empowered to remand the matter for deciding application Exh.5 afresh. Learned counsel submits that the learned District Judge almost has considered the appeal on merits, however, remanded the matter only for the reason that the trial court has not properly adjudicated the legal controversy between the parties. Learned counsel submits that the learned District Judge himself could have adjudicated the real controversy between the parties.

4. Learned counsel for the respondents-original defendants submits that he has no objection if application Exh.5 is decided by the trial court as per the remand order passed by the District Judge or even by the District Judge, if this court is inclined to quash and set aside the order passed by the learned District Judge.

5. It appears that learned District Judge-1, Latur has almost considered all aspects in the pending Misc. Civil appeal, however, for

no reason remanded the matter to the trial court for deciding application Exh.5 afresh. Furthermore, the provisions of Order XLIII of C.P.C. does not permit the learned District Judge to remand the matter back, when the appeal has been preferred against the order of temporary injunction. Apart from this, if the learned District Judge has come to certain conclusion, he could have decided the appeal on merits without remanding it back to the trial court for adjudicating the real controversy between the parties. In view of above, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby partly allowed. No costs.
- II. The impugned order dated 2.5.2017 passed by the learned District Judge, Latur in Misc. Civil Appeal No. 85 of 2016 is hereby quashed and set aside with the following directions:-
 - a) Restore the Misc. Civil appeal No. 85 of 2016 to its original number.
 - b) The parties shall appear before the District Judge-1, Latur on 12.6.2018 and the learned District Judge shall

dispose of Misc. Civil appeal No.85 of 2016 after giving an opportunity of being heard to both the parties, in accordance with law, as expeditiously as possible, preferably within a period of six months from today.

III. Writ petition is disposed of.

(V. K. JADHAV, J.)

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