

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

**APPEAL FROM ORDER NO.75 OF 2018
WITH
CIVIL APPLICATION NO. 13999 OF 2018 IN AO/75/2018**

**BABURAO SUBHANA DHAIGUDE DIED BY LRS1A. NAGUBAI
BABURAO DHAIGUDE AND OTHERS
VERSUS
SOPAN SUBHANA DHAIGUDE DIED BY LRS 1A. TRIVENIBAI
SOPAN DHAIGUDE AND OTHERS**

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Advocate for the Appellants : Shri V. V. Bhavthankar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 10th DECEMBER, 2018.

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PER COURT :

1. The appellants, who are original plaintiffs, are aggrieved by the judgment and order dated 31/08/2018 delivered by the Appellate Court, by which, Regular Civil Appeal No. 87/2018, filed by the original defendants, has been allowed. The ex-parte judgment and decree of the Trial Court dated 14/12/2009 allowing RCS No. 374/2008, has been set aside and the suit has been remanded for a re-hearing.

2. The strenuous contentions of the learned Advocate for the original plaintiffs can be summarized as under :-

- (a) The plaintiffs filed their suit on 17/07/2008.
- (b) 'No W.S.' order was passed against the defendants on 07/03/2009.
- (c) An application Exhibit 21 was filed on 08/08/2009 praying for recalling of the 'No W.S.' order.
- (d) By order dated 05/12/2009, Exhibit 21 was rejected.
- (e) The defendants did not choose to take the litigation further.
- (f) On 14/12/2009, the suit was decreed.
- (g) The defendants preferred a Regular Civil Appeal alongwith an application seeking condonation of delay, on 03/05/2010.
- (h) The application was dismissed in default on 16/10/2015.
- (i) On 21/02/2018, this Court allowed Appeal From Order filed by the defendants and the condonation of delay application was restored.
- (j) The delay was condoned by the First Appellate Court.
- (k) By the impugned judgment and order, the Appeal has been allowed.

3. I find from the record that an immovable property is at issue. The suit was decided within a span of nine months after the 'No W.S.' order was passed. The appeal was pending for a long time. The fact is that since an immovable property is at issue and two real brothers and some L.Rs. are litigating, that the Appellate Court found that the suit must be adjudicated by allowing the defendants to contest the claims of the plaintiffs.

4. I do notice the negligence and laxity on the part of the defendants. The Appellate Court has, therefore, imposed costs of Rs. 5,000/- on the defendants and has expedited the suit.

5. Considering the above, I do not find that the impugned judgment could be branded as being perverse or erroneous. The conclusion of the Appellate Court that the suit in which an immovable property is at issue, should be decided on its merits, cannot be faulted.

6. As such, the Appeal From Order, being devoid of merit, is dismissed. The Civil Application does not survive and stands disposed off.

7. However, considering the plight of these plaintiffs and the fact that both the sides are now appearing through their L.Rs., I deem it appropriate to direct the Trial Court to decide RCS No. 374/2008 as expeditiously as possible and in any case, on or before 30/06/2019. The Trial Court would refuse adjournments if they are sought on unreasonable or trivial grounds.

(RAVINDRA V. GHUGE, J.)

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