

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

**APPEAL FROM ORDER NO. 389 OF 2017
WITH
CIVIL APPLICATION NO. 505 OF 2017**

Shivsharanappa Basappa Kamreddi (Since deceased) Through LRs. & Ors. V/s. Malleshappa Parappa Teli		Appellant Respondent
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- Mr.Priyal G. Sarda for the Appellant.
- Mr.Nitin P. Dalvi for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent.

2] This Appeal is directed against the judgment and order dated 25/08/2016 passed by the Principal District Judge, Solapur, thereby allowing Regular Civil Appeal No.01 of 2015 and setting aside the judgment and decree dated 15/11/2014 passed in Regular Civil Suit No. 86 of 2012, by the Jt. Civil Judge, Junior Division, Akkalkot and remanding the matter to the concerned Court to hear both the

parties on all the issues and decide the same afresh in accordance with law.

3] The facts of this Appeal are interesting in the sense that the Appellant herein had filed a suit for specific performance of the contract of the agreement for sale of the suit property dated 27/05/1996. The said suit was decreed by the trial Court. However, while decreeing the suit, the trial Court held the specific issue No.8, as to, “whether the Plaintiff/Appellant proved that he is an agriculturist at the relevant time?”, as “redundant”. Otherwise the trial Court has answered all other issues in favour of the Appellant, holding that, the Appellant has proved the execution of the agreement, the payment of earnest amount and his readiness and willingness to perform his part of the contract. Thus, the suit filed by the Appellant for specific performance of the contract came to be decreed.

4] Against the said judgment and decree, the Respondent herein had preferred Regular Civil Appeal No.357 of 2002. In the said Appeal, the First Appellate Court has again framed various points for its determination and confirmed the findings of the trial Court on mostly all the issues holding in affirmative that the Appellant has proved the agreement of sale, his readiness and willingness to

perform his part of the agreement and further held that it was not a money lending transaction. However, as regards the issue, as to, “whether the Appellant/Plaintiff is an agriculturist?”, the First Appellate Court held that this issue was “not redundant” as held by the trial Court but it was required to be referred to the Tenancy Authorities for its finding.

5] In view thereof, the First Appellate Court held that the judgment and decree passed by the trial Court was erroneous and requires interference and accordingly, the First Appellate Court remanded the suit to the trial Court. The specific order passed by the First Appellate Court in the said judgment is as follows:.

- “1. The Appeal is partly allowed.
2. The matter is hereby remanded back to the Trial Court with the direction that issue No.8 framed be referred to the Collector, Solapur for receiving his finding and after receiving the same finding the suit be finally decided as per law.
3. The record and proceedings be remitted back to the Trial Court.
4. The parties are hereby directed to appear before the Trial Court on 25.8.2005 positively and the Trial Court to proceed further accordingly. The plaintiff and defendant to take further steps in that respect.
5. In the circumstances, the parties to bear their own costs.”

6] As a result, after the matter was remanded, the trial Court referred the issue, as to, “whether the Appellant is an agriculturist?”, to the Tenancy Authorities and after the finding on that issue was received, the trial Court held that as there is judgment of the First Appellate Court, answering remaining issues in favour of the Appellant, it was not necessary to enter into the discussion of those issues and now as the issue relating to the Appellant being an agriculturist is proved on record, the trial Court again decreed the suit for specific performance of the agreement.

7] When this judgment and decree of the trial Court was challenged by the Respondent in Regular Appeal No.01 of 2015, the First Appellate Court came to the conclusion that as the matter was remanded to the trial Court, it necessarily contemplated that the trial Court should give findings on all the issues afresh and thereafter decide the suit. Instead thereof, as the trial Court had acted upon the findings to the issues given earlier by the trial Court and the First Appellate Court in the earlier Appeal, it was held that the trial Court has adopted a short-cut and hence, there was no option but to remand the matter back to the trial Court for hearing both the parties on all the issues and decide the matter afresh according to the law.

8] While challenging this order of the First Appellate Court, the submission of learned counsel for the Appellant is that when the First Appellate Court itself has given the findings to all the issues and thereby also confirmed the findings given by the trial Court to these issues, like the execution of the agreement, the willingness on the part of the Appellant to perform his part of contract, the trial Court could not have again discussed those issues and given fresh finding thereto. The only issue on which the matter was remanded to the trial Court was, to obtain the finding as to whether the Appellant/Plaintiff is an agriculturist? Once that finding was received, the trial Court was justified in decreeing the suit on the basis of the said finding having regard to the findings given on other issues earlier.

9] According to learned counsel for the Appellant there was no question of deciding the entire suit afresh, as there was no such specific order passed by the First Appellate Court. It is submitted that while remanding the matter, the First Appellate Court has not completely set-aside the judgment and decree passed by the trial Court. The Appeal was also allowed partly. In that view of the matter, the trial Court was not expected at all to give findings on all the issues again; especially, when the findings given earlier by the trial Court

were confirmed by the First Appellate Court while deciding the Appeal. According to learned counsel for the Appellant therefore, the impugned order passed by the First Appellate Court now again remanding the matter back to the trial Court cannot be sustainable in law.

10] However, as rightly submitted by learned counsel for the Respondent, no fault can be found in the impugned order passed by the First Appellate Court. It is pertinent to note that, when the matter was remanded first, at that time, the First Appellate Court has clearly answered the issue, as to, “whether the judgment and decree passed by the trial Court is erroneous and requires any interference or deserves to be set-aside” in affirmative and accordingly held that it requires remand of the suit. Even the final part of the order which is passed in the said Appeal was directing the trial Court “to finally decide the suit as per law”, thereby clearly indicating that the suit was to be decided afresh in accordance with law. If the intention of the First Appellate Court at the time of remand of the matter was only to call for the finding on a particular issue alone, that of Appellant being an agriculturist or otherwise, the First Appellate Court could have relied upon the provisions of Order-41 Rule 25 of the Civil Procedure Code, which clearly provide that,

“Where the Court from whose decree, the appeal is preferred, has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred and in such case shall direct such Court to take the additional evidence required and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.”

11] Thereafter, as per Order-41 Rule 26 of the CPC, such finding and evidence as forwarded by the trial Court is to be put on record in the suit and the Appellate Court is expected to decide the appeal on the basis of such evidence and finding to the issue.

12] Here, in the case, if it was the intention of the First Appellate Court to obtain only the finding on that particular issue, the First Appellate Court would not have remanded the entire suit but would have called upon the trial Court to record the finding on that particular issue and sent it to the First Appellate Court for decision of the Appeal. Though such mode was specifically available to the First

Appellate Court, the fact is that the First Appellate Court has not adopted that mode. Conversely, it held the judgment and decree passed by the trial Court to be erroneous and remanded the matter back to the trial Court for finally deciding the same in accordance with law. Hence, it necessarily implies that the trial Court was to decide the suit afresh on the basis of the finding received on this particular issue and enter the findings to all the issues as the finding on this particular issue was bound to have bearing on the findings of other issues also. At-least, the Respondent was having the right to challenge the finding to this issue and argue the case on all the issues before the trial Court. The trial Court has however not adopted the course which was required to be followed, when the suit was to be decided finally as per law. The trial Court has not at all applied its mind to other issues, which were to be decided again and findings were required to be entered on those issues also. As the trial Court has not done so, the First Appellate Court was justified in remanding the matter back to the trial Court, for giving findings on all the issues and deciding the matter afresh in accordance with law.

13] In considered opinion of this Court therefore, no fault can be found in the impugned judgment and order of the First Appellate Court. The Appeal therefore holds no merit, hence stands dismissed.

14] Considering that the suit is of the year 1999 and already it is being remanded second time, the trial Court shall decide the same as expeditiously as possible.

15] In view of dismissal of the Appeal, nothing survives in the Civil Application, hence stands disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]