

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 764 OF 2011

Anna Bhau Hounje
(since deceased) through legal heirs
Adinath Anna Hounje and Ors.

...Appellants

Versus

Anna Appa Chogule & Ors.

...Respondents

.....

Mr.Anilkumar Patil for the Appellants.
Mr. Ajay A. Joshi for Respondent Nos. 1, 2 and 4A.
Mr.Pratap Patil for Respondent Nos. 3, 4B and 4D.

.....

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **MARCH 19, 2018**

P.C.:

1. All the parties are present before the Court.
2. The learned Counsel for the appellants submits that this Court by order dated 3rd August 2015 had framed the following substantial question of law :

(i) Whether the lower appellate Court has travelled beyond the controversy involved in the suit, to decide the issue of limitation and res-judicata?

(ii) Whether the lower appellate Court has answered the point no.1 in ignorance of the finding recorded by the trial Court on issue No.2?

3. Heard submissions of the learned Counsel for both the sides. Perused documents and judgments. I am of the view that it is a fit case to send the matter directly to the Court of Joint Civil Judge, Junior Division, Sangli with a view to save time. The issues of *res judicata* and limitation were not framed by the trial Court. The issue of limitation was raised in the written statement. However, the issue of *res judicata* was not considered at all by the defendants and the trial Court. The defendants have raised and argued that issue before the First Appellate Court. These issues are to be framed as additional issues by the trial Court and the parties are to be given an opportunity to lead evidence on that point only, if they want. Hence, I pass the following order :

ORDER

(a) The Second Appeal is partly allowed.

(b) The judgment and decree dated 11th September, 2008 passed by the learned District Judge-1, Sangli in Regular Civil Appeal No. 515 of 1997 and also the judgment and decree dated 30th April, 1993 passed by the learned Joint Civil Judge, Junior Division, Sangli in Regular Civil Suit

No. 189 of 1990 are hereby set aside.

- (c) The trial Court is directed to frame additional issues on the point of *res judicata and limitation*. Thereafter, parties may lead further evidence on these additional issues only, if they want.
- (d) The earlier issues and evidence tendered by the parties are maintained as it is.
- (e) The trial Court to consider additional issues and further evidence if tendered by the parties and also consider the submissions made by the learned counsel for both the sides. The trial Court to hear and conclude the matter on or before 30th August, 2018.
- (f) The parties to appear before the trial Court on 3rd April, 2018 at 11.00 a.m.

4. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)