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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 646 OF 2015
WITH
CIVIL APPLICATION No. 1185 OF 2018

Dilip Abu @ Abasaheb

Pharande & Ors.

... Appellants

Vs.

Smt. Taramati Anandrao

@ Mhasku Pharande & Ors.

... Respondents

Mr. Milind Sathaye, for the Appellants.

Mr. Vaibhav R. Gaikwad, for Respondent No. 1.

CORAM : A. M. DHAVALA, J.

DATE : SEPTEMBER 17, 2018

PC :-

1. Heard the learned advocate Mr. Milind Sathaye for the Appellants and the learned advocate Mr. Vaibhav Gaikwad for Respondent No. 1. The plaintiffs who are legal heirs of Sawala Pharande claimed that they are owners of 47R land. Sawala and four others had purchased jointly a land of 2H-37R and the same was partitioned among them. Sawala received 47R land, where he was having a cattle shed and dung field.

According to plaintiffs, they sold their cattle, and as the land was vacant, on the request of defendant No. 1, he was permitted to use it gratuitously in 2003. But he filed Regular Civil Suit No. 14 of 2005 claiming that it belongs to the joint family and it should be partitioned. Defendant No. 1 also filed Regular Civil Suit No. 36 of 2005 for vacant possession of land from gratuitous licensee. The suit has been decreed on 30.1.2012. It is reported that Regular Civil Suit No. 14 of 2005 was also dismissed. The appeal against judgment & decree in R.C.S. No. 36 of 2005 being Regular Civil Appeal No. 118 of 2012 also came to be dismissed, and therefore, the legal heirs of defendant No. 1 are in second appeal.

2. It is learnt that Regular Civil Appeal No. 350/2016 filed against dismissal of Regular Civil Suit No. 14 of 2015 by the present appellant is pending.

3. The suit filed by the present Appellants was prior in point of time. In normal course, both the suits should have been

clubbed and decided by one and the same judge, so as to avoid conflicting decisions. This was not done, and the later suit has been decided earlier. The same was situation with the two appeals. As per S. 10 C.P.C., when the former suit was pending and the later suit involves common questions of law, the later suit should have been stayed, but it was not done. The appeal against the judgment and decree in Regular Civil Suit No. 36 of 2005 has been decided and the appeal against former suit being Regular Civil Suit No. 14 of 2005 is pending.

4. Any order in the second appeal, even regarding admission, is likely to influence the judge conducting the first appeal, being Regular Civil Appeal No. 350 of 2016. Considering the legal position, it is deemed fit that this second appeal should be stayed. The District Judge, Satara is directed to expedite hearing of Regular Civil Appeal No. 350 of 2016.

5. Learned advocate Mr. Gaikwad, appearing for Respondent No. 1 agrees to cooperate for early disposal of the

pending appeal. It is clarified that learned Additional District Judge, conducting the appeal shall decide the pending appeal without any way getting influenced by the decision in Regular Civil Suit No. 36 of 2005 or the appeal therefrom or any observations made in this appeal. No opinion is expressed about merits of the case. In case appeal is decided and any party wishes to prefer the appeal, the same shall be tagged with this second appeal. The learned District Judge is directed to dispose of the first appeal within three months.

6. Meanwhile, considering the concurrent findings of the trial court and the first appellate court, the interim protection is given only on conditions. The execution and implementation of the judgment of the trial court is stayed subject to the appellants herein furnishing security, to the satisfaction of the executing court, and depositing amounts towards the mesne profits and damages as the executing court may deem fit, as and by way of interim measure without prejudice to the rights of the parties.

7. Parties shall inform this court when the pending appeal is decided by the Additional District Judge.

8. In view of above, Civil Application No. 1185 of 2018 filed in the appeal is disposed of.

Sd/-
[A. M. DHAVALE, J.]

Vinayak Halemath