

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.541 OF 2018

IN

CIVIL REVISION APPLICATION NO.147 OF 2017

Shetty Bhojak (deceased) through his LRs
Sunil Bhoja Shetty and others ... Applicants

In the matter between

S. Subramanian (decd) through his LRs
Radhamani and others

Vs.

Ramshankar Shamnarayan Rai (deceased)
through his LRs Prabhakar Rai and others ... Respondents

Mr. R. A. Thorat, Senior Advocate i/b. Ms Pratibha Shelake for Applicants.
Mr. Ashutosh Gavnekar i/b. Mr. C. G. Gavnekar for Respondents.

CORAM : R. G. KETKAR, J.

DATE : SEPTEMBER 05, 2018

P.C. :

Heard Mr. Thorat, learned Senior Counsel for the applicants, who are respondents No.2(a) to 2(c) in C.R.A.No.147 of 2017 and Mr.Gavnekar, learned Counsel for the opponents, who are original applicants in C.R.A.No.147 of 2017 at length.

2. By this Application, applicants have prayed for recalling the order dated 24.07.2018 passed by this Court in the above C.R.A. and for deciding the said C.R.A. on its own merits. By order dated 24.07.2018, in exercise of powers under Order XLI, Rule 25 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), issue was framed and parties were permitted to adduce evidence before the trial Court.

3. Mr. Thorat has invited my attention to the order dated 29.08.2015 passed by the learned trial Judge in R.A.E. Suit No.1184/3628 of 1988

and in particular, additional issue No.1 and the finding recorded against that issue, which is to the following effect:

- “1. Whether the plaintiffs prove that defendant No.1 has sublet the suit premises without plaintiff's permission in favour of the original defendant No. 2 [predecessor of defendant No.2(a), 2(b) and 2(c)? In the affirmative.

4. Mr. Thorat, therefore, submitted that in view of the issues and findings, it is unnecessary to frame issue as was framed by order dated 24.07.2018. Mr. Gavnekar fairly accepts this position.

5. In view thereof, by consent of the parties, the order dated 24.07.2018 is recalled. Civil Application is allowed in terms of prayer clause (a). List the C.R.A. for 'admission' on 24.09.2018.

6. If the R & P is already sent, the same shall be called again. All parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab