

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.187 OF 2016
ALONG WITH
CIVIL APPLICATION NO.262 OF 2016

Narmadabai Jairam Pardeshi (Teli) & Ors. Appellants
V/s.
Sidram Nagappa Karpe Respondent

Ms. N.R. Prabhu-Salgaonkar for the Appellants.

Mr. Ajit Alange for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23RD OCTOBER, 2018.

P.C. :

1. Heard learned counsel for the Appellants and Respondent.
2. This Appeal takes an exception to the 'Judgment and Order' dated 30th November 2013 passed by the District Judge-4, Solapur, thereby allowing Regular Civil Appeal No.170 of 2013 and setting aside the 'Judgment and Decree' passed in Regular Civil Suit No.758 of 2003 on 20th February 2013 by the 4th Joint Civil Judge, Junior Division, Solapur and remanding the matter to the Trial Court for adjudication on merits. While remanding the matter, the first Appellate Court has also directed the Trial Court to decide the same as expeditiously as possible, after giving full opportunity to both the parties.

3. In the facts and circumstances of the case, there appears to be sufficient reason for the remand of the Suit; because, in the first instance, the Respondent has not examined himself, but has examined his 'Power of Attorney'. Therefore, considering the ratio laid down by the Hon'ble Apex Court in the case of *Janki Vashdeo Bhojwani and Anr. Vs. Indusind Bank Ltd. and Ors.*, AIR 2005 SC 439, it was found fit that, the Respondent himself enter into witness box to prove his claim. Secondly, it was also found that, the Suit suffers from misjoinder of causes and multifariousness. Thirdly, it was also noted that, initially, Suit was filed under the provisions of the Bombay Rent Act. Thereafter, the amendment was sought in the plaint to invoke the provisions of Transfer of Property Act, but the said amendment was not allowed upto this Court. The Trial Court has merely answered all these issues relating to maintainability of the Suit and misjoinder of causes of action etc. as redundant. Hence, the first Appellate Court has rightly held that, answering such issues as redundant is not the proper way of deciding the Suit; especially when those issues were raised and agitated by the parties before the Trial Court and they are going to the root of the maintainability of the Suit. Hence, instead of dismissing the Suit, the fresh opportunity is given to the Respondent to prove his case, making his stand clear as to whether he wants to proceed under the Bombay Rent Act, Maharashtra Rent Control Act or even under the Transfer of Property Act, as the subject-matter of the property is an 'open land'.

4. Having regard to these facts, this Court does not find any reason to interfere in the impugned 'Judgment and Order' of the first Appellate Court. The Appeal, therefore, being without merits, stands dismissed.

5. In view of the dismissal of the Appeal, Civil Application No.262 of 2016 pending in the Appeal does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]