

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

**APPEAL FROM ORDER NO.1332 OF 2013
with
CAA/1591/2013**

Shri Hiranman Kisan Fasale
since deceased, through
Smt.Anusaya Hiranman Fasale & Ors. ... Appellants

Vs.

Shri Laxman Kalu Fasale ... Respondent

Mr.Prashant D. Patil for the Appellants
Mr.Sachin Gite for Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JANUARY 8, 2018**

P.C. :

1. This Appeal from Order is directed against the judgement and order dated 26.9.2013 in Regular Civil Appeal No.109 of 2009 passed by the learned Principal District Judge, Nasik. The learned District Judge, while allowing the said appeal, has quashed and set aside the judgment and decree in Regular Civil Suit No.89 of 2006 dated 31.3.2009 and has remanded the matter to the trial Court to recast the issues essential to the right decision of the suit and decide the matter afresh.

2. The original appellant is the original plaintiff, who had filed a suit for declaration and perpetual injunction in respect of the suit property, which was bequeathed to him by way of a will by one Mahadu Fasale i.e., his deceased uncle. The respondent-original defendant has taken a stand that these are all joint family properties and the case of the plaintiff of the will of Mahadu Fasale and bequeath of the suit property in his favour is false.

3. The learned Counsel for the appellants while challenging the order of the appellate Court, has submitted that the trial Court has decreed the suit in favour of the deceased appellant and the appellate Court ought not to have remanded the said matter as all issues are properly adjudicated by the trial Court.

4. Per contra, the learned Counsel for the respondent/original defendant, while supporting the order of the appellate Court, has pointed out that the appellate Court has rightly taken a view that a specific issue is not framed in respect of the property described in para 1b of the plaint. So, the finding given in para 10 of the judgment in respect of partition is also given by the trial Court is incorrect. The learned Counsel has further submitted that the appellate Court has rightly observed that the parties have not

come with a case of division of property either by family arrangement or partition and, therefore, the main question is not properly addressed by the trial Court, is correct.

5. Perused both the judgments of the Courts below. The trial Court has framed 16 issues. After going through the issues, it appears that the trial Court has settled the issues exhaustively. If the appellate Court is of the opinion that the issue of family arrangement is wrongly decided and proper discussion in respect of the properties mentioned in para 1b of the plaint is required, the appellate Court can do so and for this reason, the order of remand is not required. The appellate Court can deal with the entire evidence from its own angle and appreciate it and consider the matter on merits, on the basis of the evidence which is brought on record and available. In view of this, I do not find that any separate issue is required or is not answered and thus, the order of remand is not justified. Accordingly, the following order is passed:

- i) The impugned order dated 26.9.2013 passed by the appellate Court is set aside.

ii) The appellate Court to take note that the suit is of 2006 and was decreed in 2009 and hence, the appeal shall be heard and decided expeditiously and in any case on or before 31st July, 2018.

iii) The parties shall appear before the appellate Court on 22.1.2018 at 11am and cooperate with the appellate Court.

iv) All contentions of the parties are kept open and the appellate Court to decide and appreciate the evidence on merits.

6. Appeal is disposed of in the above terms.

7. In view of the disposal of the Appeal from Order, the Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)