

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

**APPEAL FROM ORDER NO. 287 OF 2018
WITH
CIVIL APPLICATION NO. 376 OF 2018**

Pandharinath Genu Barde & Anr.	...	Appellants
V/s.		
Ramkrishna Deoram Barade & Ors.	...	Respondents

- Mr.Pratik Rahade i/bb. Mr.P.N. Joshi for the Appellants.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th SEPTEMBER, 2018.

P.C. :

- 1] Heard learned counsel for the Appellants.
- 2] The challenge in this Appeal is to the order of remand of the suit as passed by the District Judge-8, Nashik, on 09/10/2017 in Regular Civil Appeal No.223 of 2015.
- 3] The grievance of learned counsel for the Appellants is that the trial Court has dismissed the entire suit of the Respondent Nos.1 and 2/ Original Plaintiffs not only on account that it was bad for non joinder of necessary parties but also on the account that the Respondent Nos.1 and 2 has suppressed some material facts from the Court.

4] It is urged that the Appellate Court has however remanded the suit in order to give an opportunity to the Respondent Nos.1 and 2 to add the necessary parties. Moreover, while doing so, the Appellate Court has also not considered the counter claim filed by the present Appellants, as the finding given by the trial Court to one of the issue was against the present Appellants, hence it is submitted that, it is necessary to interfere in the order of remand as passed by the First Appellate Court.

5] However, in my considered opinion, when the suit was for partition of the joint family property, it follows that all the co-sharers or the persons having interest in the said properties are required to be joined as party to the suit.

6] Admittedly, those co-sharers were not joined and therefore, both the trial Court and the Appellate Court came to the conclusion that the suit is bad for non joinder of necessary parties.

7] In such situation, the only course open to the First Appellate Court was to give an opportunity to the Respondent Nos.1 and 2 to add those necessary parties in the suit and for that purpose to remand the matter so as to serve the substantiate cause of justice. Because otherwise also dismissal of the suit on the ground of non joinder of necessary parties does not preclude the Respondent Nos.1 and 2 from filing the fresh suit on the same cause of action.

8] Therefore in order to avoid multiplicity of the proceedings, if the Appellate Court had deemed it fit to remand the matter to the trial Court to extend such an opportunity to the Respondent Nos.1 and 2 to add the necessary parties, then, no fault can be found in the impugned order of the First Appellate Court.

9] As regards the grievance of the Appellants that their counter claim is not considered by the Appellate Court, when admittedly the Appellate Court was not deciding the Appeal on merits but remanding the same for joining of necessary parties, it was not necessary for the Appellate Court to consider the counter claim.

10] Even otherwise also, all the issues and contentions raised by the parties are expressly open before the trial Court as the entire suit is remanded to the trial Court for fresh hearing, in which the trial Court will also consider the evidence already adduced and to be adduced after the joining of necessary parties.

11] Therefore, the Appeal holds no merits, hence stands dismissed.

12] In view of dismissal of the Appeal, nothing survives in the Civil Application, hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]