

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO. 85/2018

(CHANDRASHEKHAR RAMANAND GUPTA **VERSUS** SHASHIKALABAI WAMANRAO WANKHEDE & OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri S.V. Sohoni, counsel for applicant.
 Shri S.D. Chopde, counsel for the non-applicants.

CORAM : A.S. CHANDURKAR, J.

DATE : SEPTEMBER 28, 2018.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard.

The non-applicant no.1 is the original plaintiff who has filed Regular Civil Suit No.96 of 2006 seeking a declaration that she has legal right to continue in possession of the suit fields and that the defendant nos.4 and 5 on the basis of documents registered in their favour have no authority to disturb her possession. In that suit, the defendant no.5 filed an application under provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the plaint on the ground that by virtue of an earlier adjudication of Special Civil Suit No.30 of 2003, the suit as filed was not maintainable. The trial Court rejected that application by the impugned order and one of the reasons as mentioned in paragraphs 4 and 5 of the impugned order was that the adjudication in Special Civil Suit No.30 of 2003 had not attained finality.

On hearing the learned counsel for the parties, it is seen that when the application below Exhibit 108 was decided, a second appeal arising out of the decree passed in Special Civil Suit No.30 of 2003 was pending. That second appeal has now been decided on 10.04.2018 which is after passing of the impugned order. Since the trial Court has observed that the said decree had not attained finality, it is found that a fresh adjudication in the light of the second appeal being decided subsequent to the passing of the impugned order is necessary. Accordingly, following order is passed.

I) The order passed below Exhibit 108 dated 14.03.2018 is set aside. That application filed by the defendant no.5 below Exhibit 108 is restored for being decided afresh in accordance with law.

II) It is clarified that this Court has not examined the correctness of the reasons as mentioned in the impugned order and the trial Court shall decide the same expeditiously on its own merits.

Civil Revision Application is allowed in the aforesaid terms and disposed of. No costs.

JUDGE

APTE