

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10005 OF 2019

SHIVAJI SHAHAJI JADHAV AND OTHERS
VERSUS
UJWALABAI DNYANOBA PADILE AND OTHERS

...
Advocate for the Petitioners : Shri Choudhary S.S. a/w Shri K.S.Patil

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th August, 2019

Per Court:

1 The petitioners, who are the original plaintiffs, are aggrieved by the order dated 15.02.2019 passed by the Trial Court, by which, the application exhibit 112 filed by the plaintiffs seeking a direction that the defendants should argue first in Special Civil Suit No.148/2009, has been rejected.

2 I have heard the strenuous submissions of Shri Chaudhari, learned advocate for the petitioners. With his assistance, I have gone through the grounds formulated in the memo of the petition.

3 The record reveals that Special Civil Suit No.148/2009 was earlier decided by the judgment dated 13.01.2012. The defendants being aggrieved by the judgment and decree, approached the Appellate Court in Regular Civil Appeal No.74/2012. It was the contention of the defendants

that they have perfected their title to the suit property by adverse possession. No issue of adverse possession was framed. The defendants legally could oppose the claim of the plaintiffs by using the plea of adverse possession as a shield. The Appellate Court, therefore, set aside the entire judgment and all findings on the issues cast and remitted the suit to the Trial Court by directing an additional issue to be framed as regards adverse possession and to give an opportunity to the defendants to prove their title by leading evidence only to the extent of the new issue cast.

4 The plaintiffs were before this Court in Appeal from Order No.77/2016. By judgment dated 06.03.2018 delivered by this Court (Coram : Sunil P. Deshmukh, J.), the said Appeal from Order was dismissed and the Trial Court was directed to decide the newly framed issue as early as possible within a period of three months. This is being understood by the petitioners that though the entire judgment has been quashed and set aside and the findings on all issues cast do not survive, the suit should be restricted only to the extent of the newly framed issue with regard to the adverse possession and that the defendants have to canvass their case only to the extent of adverse possession.

5 I do not find either from the judgment of the Appellate Court or from the judgment of this Court that it has been specifically recorded that the entire suit would now be entertained only as regards one issue with reference to the adverse possession. I do not find that the Trial Court

has committed any error in passing the impugned order. In fact, the application exhibit 112 filed by the plaintiffs is practically a self defeating application. Nevertheless, since the Trial Court is to decide the suit afresh along with the newly framed issue of adverse possession, no interference is called for. This writ petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)