

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

APPEAL FROM ORDER NO.70 OF 2018

SMT. RUKHMINIBAI WAMANRAO BUKHTARE AND OTHERS
VERSUS
RUKHMAN NARSINGRAO WAYWALE

...
Advocate for the Petitioners : Shri Shinde Ganesh P. a/w Shri D.A.Mane.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th March, 2019

Per Court:

1 The Appellants, who are the original Plaintiffs, are aggrieved by the judgment and order dated 30.06.2016 passed by the Appellate Court in RCA No.126/2015 by which, the appeal filed by the Respondent/ original Defendant is allowed and the matter is remanded for a retrial before the Trial Court.

2 I have heard the strenuous submissions of the learned Advocate for the Appellants. I have gone through the grounds formulated by him in the memo of the appeal and have considered the appeal paper book with his assistance.

3 Regular Civil Suit No.445/2011 was preferred by these Appellants in 2011. The Defendant is said to have failed in participating in the proceedings. The suit was, therefore, decreed ex-parte by judgment

dated 06.11.2012. The suit property is a House bearing No.53/3 situated at Naviwadi, Indiranagar, Purna Road, Nanded. The Plaintiffs had sought eviction of the Defendant. The Defendant contended that he is an auto-rickshaw driver, illiterate and the Plaintiffs had obtained his signature on a blank paper vide which it was shown that he had appeared before the Trial Court. "No Written Statement" order was passed and the suit was decreed ex-parte within one year.

4 Despite the contentions of the Appellants that the Defendant was not diligent and had failed to participate in the proceedings, I cannot ignore that the suit was decreed within one year, involving a house property.

5 The Appellants/ Plaintiffs had put the ex-parte decree for execution in 2013. The Defendant was served with the execution proceedings and after appearing in the said proceedings, he preferred his appeal in 2015 for challenging the ex-parte decree. The Appellate Court considered the rival contentions and concluded that the Defendant would lose a valuable right of protecting his property, which is the house. Costs of Rs.3000/- were imposed on the Defendant keeping in view that he is an auto-rickshaw driver.

6 In my view, it cannot be said that the suit was prolonged for many number of years and as the Defendant did not participate in the suit for a long duration that he does not deserve any relief. The suit was

decreed in one year by the Trial Court. The execution proceedings were initiated in 2013. No doubt, the Defendant appears to be negligent, but his conduct is not so gross so as to deprive him of an opportunity of participation in the litigation and make an attempt to save his house property.

7 Considering the above, I do not find that the impugned judgment of the Appellate Court could be termed as being perverse or erroneous or likely to cause gross injustice to the Appellants/ Plaintiffs. In fact, the impugned judgment is an attempt on the part of the Appellate Court to do complete justice.

8 In view of the above, this Appeal from Order, being devoid of merit is, therefore, dismissed.

9 However, as the suit was lodged in 2011 and is about 08 years old, the Trial Court shall endeavour to decide RCS No.445/2011 as expeditiously as possible and preferably on or before 31.10.2020.