

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

APPEAL FROM ORDER NO.50 OF 2018

WITH

CIVIL APPLICATION NO.9503 OF 2018

1. Mandabai w/o Vishwanath Bhope,
Age 60 years, Occu. Household,
R/o Anwa, Tq. Bhokardan,
District Jalna.

2. Gajanan s/o Vishwanath Bhope,
Age 34 years, Occu. Agriculture,
R/o Anwa, Tq. Bhokardan,
District Jalna.

... APPELLANTS
(Orig.DeftsNo.1 & 2)

VERSUS

Kalidas s/o Yogiraj Bhope
Age 74 years, Occu. Priest and Agri.,
R/o Anwa, Tq. Bhokardan,
District Jalna.

... RESPONDENT
(Original Plaintiff)

.....
Shri P.D. Bachate, Advocate for appellants
Shri V.D. Salunke, Advocate for respondent
.....

CORAM: R.G. AVACHAT, J.

DATED : 27th AUGUST, 2019.

J U D G M E N T :

Heard Mr. Bachate, learned counsel for the appellants
and Mr. Salunke, learned counsel for the respondent at some

length. This is an Appeal from the order dated 19/3/2018, passed by Ad-hoc District Judge, Jalna, in Regular Civil Appeal No.68/2011, setting aside the judgment and decree dated 1/3/2011, passed by Jt. Civil Judge, Junior Division, Bhokardan in Regular Civil Suit No.100/2004, and remanding the same to the trial Court to decide the suit afresh after recast of issues and giving opportunity to the parties to adduce evidence.

2. Learned counsel for the appellant would submit that, the first appellate Court ought to have decided the appeal on its merits, instead of remanding the suit to the trial Court for deciding afresh. According to learned counsel, the suit had earlier been dismissed on 28/11/2007 by the Civil Judge, Junior Division, Bhokardan. The plaintiff had preferred appeal against the judgment and decree dated 28/11/2007. The first appellate Court allowed the appeal on 6/11/2009 and remanded the suit to the trial Court for deciding it afresh. As per the directions given by the first appellate Court, the issues were recast and the suit was tried. The suit again came to be dismissed on 1/3/2011. The plaintiff filed the appeal, being Regular Civil Appeal No.68/2011, wherein the impugned judgment and order came to be passed.

3. The appellants herein are the original defendants in the suit. According to the learned counsel for the appellants, the

first appellate Court framed the same issues in different terminology and directed the trial Court to decide the suit afresh.

4. The suit dates back to 2004. After having been decided the same, giving full opportunity to the parties to lead the evidence, it appears that, the first appellate Court recast the issues which were there before the trial Court. It needs no mention that when parties to the suit go for trial, knowing fully well each other's case, framing of issues loses its importance.

5. Be that as it may, the parties to the appeal came around to the proposal of this Court that the order passed by the first appellate Court remanding the suit to be set aside with a direction that the appeal be heard again and decided in accordance with law. Needless to mention that the first appellate Court would have all its powers to decide the appeal in exercise of the provisions contained in Order XLI of the Code of Civil Procedure.

6. In view of the above, the Appeal stands disposed of in terms of the following order :

ORDER

The Appeal is allowed.

The order dated 19/3/2018, passed by Ad-hoc District Judge, Jalna in Regular Civil Appeal No.68/2011 is set aside. The first appellate Court is directed to decide the appeal afresh.

In view of disposal of the Appeal from Order, Civil Application No.9503/2018 stands disposed of.

(R.G. AVACHAT)
JUDGE

fmp/-