

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

WRIT PETITION NO. 4638 OF 2019

NARAYAN RANBHAU KARANJKAR AND OTHERS
VERSUS
RAMLING BAPURAO MALI THROUGH LRS PADMINIBAI
RAMLING MALI AND OTHERS

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**WITH
CIVIL APPLICATION NO. 12268 OF 2019 AND
CIVIL APPLICATION NO. 12269 OF 2019 IN
WRIT PETITION NO. 4638 OF 2019**

BAPURAO NARAYAN KARANJKAR AND OTHERS
VERSUS
RAMLING BAPURAO MALI THROUGH LRS PADMINIBAI
RAMLING MALI AND OTHERS

...

Advocate for the Petitioners : Smt. M. A. Kulkarni
Advocate for Respondent Nos. 1(A), 1(C), to 1(E), 2
and 3 : Shri A. A. Khande h/f. Shri G. V. Sukale
AGP for Respondent No. 5 : Shri A. R. Kale
Advocate for Respondent No. 6 (A) : Shri S. Y. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 15th NOVEMBER, 2019.

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PER COURT :

1. I have considered the submissions of the learned Advocates for the respective sides. Considering the order passed by my learned brother Shri Justice N. M. Jamdar on 20/12/2018 while disposing off Writ Petition

No. 12396/2016, I do not have to advert to the entire submissions of the litigating sides.

2. In the earlier Writ Petition of 2016, my learned brother had recorded that cross objections were filed by the petitioner herein in Regular Civil Appeal No. 2/2003. However, it was not pointed out to the Court that the cross objections filed by these petitioners was not registered as a separate Appeal under Order XLI Rule 22 of the Code of Civil Procedure and was merely granted an Exhibit No. 21 in Regular Civil Appeal No. 2/2003. It was also not pointed out that after RCA No. 2/2003 was decided by judgment on 19/12/2012, naturally, Exhibit 21 which was supposedly an application in the same proceeding, would not have survived. The litigating sides did not apprise this Court, when the order was passed on 20/12/2018, that the said cross objections will have to be delinked with RCA No. 2/2003 and will have to be registered separately under Order XLI Rule 22 of the CPC.

3. The Honourable Apex Court in ***Mahadev Govind***

Gharge and others vs. Special Land Acquisition Officer, Upper Krishna Project, Kamkhandi, Karnataka, [2011 (5) Mh.L.J. 532], has concluded that cross objections to a decree under a Regular Civil Appeal can be filed even after the expiry of the statutory period of one month subject to the leave of the Court and such cross objections will have to be treated as a separate Appeal and will have to be decided as such.

4. After much probing in this matter, the petitioners now reveal that the said cross objections have not been registered separately and were purely taken on record by the First Appellate Court as Exhibit 21. Consequentially, by the impugned order dated 20/03/2019, the First Appellate Court dealt with an application for amendment filed by the petitioners under Order VI Rule 17 of the Code of Civil Procedure, in the cross objections Exhibit 21 and by a cryptic order, concluded that the application for amendment was not tenable as the Regular Civil Appeal was finally decided and hence Exhibit 21 is not adjudicated upon.

5. Having considered the submissions of the learned Advocates for the respective sides, I have considered the application filed by the petitioners on 07/02/2016 for amendment so as to add a prayer in the cross objections, which were filed on 14/01/2003. I have considered the contents of the amendment application as well as the prayer put forth. Considering that the cross objections were filed on 14/01/2003 and the prayer sought to be added for invoking the jurisdiction of the Appellate Court to set aside an order dated 07/01/2016 in M.A. No. 6/2003, I do not find that the said application deserves to be entertained and this petition is, therefore, rejected to that extent.

6. I cannot turn a blind eye to the order passed by my learned brother on 20/12/2018 and it cannot be accepted that the said order would be rendered inconsequential. The learned Advocate for the petitioners submits that the cross objections be registered separately and the parties would deal with

the said application forthwith without seeking an adjournment. Though the learned Advocates appearing on behalf of the respondents have opposed this petition, I do not find any impediment in directing the Appellate Court to decide the cross objections because these very respondents had consented before this Court on 20/12/2018 that the cross objections be decided within two months.

7. In view of the above, this petition is partly allowed. Pending Civil Applications do not survive and stand disposed off. Exhibit 21 stands restored. The learned Ad-hoc District Judge-I, Osmanabad, shall separately register the cross objections earlier marked as Exhibit 21 in RCA No. 2/2003, as an appeal.

8. A copy of this order obtained from the official website of the Bombay High Court shall be placed before the learned Court and furnishing of a certified copy is dispensed with.

9. All the litigating sides shall appear before the

learned Court on 25/11/2019. They shall advance their oral arguments on the cross objections without seeking an adjournment on or before 16/12/2019 and the learned Court shall decide the same on or before 31/12/2019. The ad interim protection granted by order dated 20/12/2018 shall lose its efficacy w.e.f. 01/01/2020.

10. All contentions of the litigating sides shall be kept open, but restricted only to the pleadings in the cross objections. The respondents are at liberty to file their written say on or before 04/12/2019.

11. At the request of the learned Advocate for the petitioner, Miscellaneous Applications, if any, filed in the cross objections, shall stand disposed off.

(RAVINDRA V. GHUGE, J.)

shp/-