

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

Second Appeal No. 0364 of 2016

District : Jalgaon

Shri Santosh Madanlal Agrawal,
Age : 46 years,
Occupation : Business,
R/o. Main Road, Raver,
Dist. Jalgaon.

.. Appellant
(Original
defendant)

versus

1. Shri Bhagwat Ragho Karad,
Age : 64 years,
Occupation : Agriculture.
 2. Shri Sudhir Bhagwat Karad,
Age : 34 years,
Occupation : Agriculture.
 3. Shri Dhanraj Sitaram Karche
(Pachpohe),
Age : 57 years,
Occupation : Agriculture.
 4. Late Nathu Krishna Badhe
(Dead).
- All R/o. Village Savkheda (Bk.),
Taluka Raver, Dist. Jalgaon.

.. Respondents
(Original
plaintiffs)

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Mr. M.M. Bhokarikar, Advocate, for the appellant.

*Mr. Chandrakant P. Patil, Advocate, for
respondents no.01 & 02.*

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 10th July 2019**

**Date of pronouncing
the judgment : 29th July 2019**

JUDGMENT :

01. Present appeal has been filed by original defendant, challenging the concurrent judgment and decree.

02. Present respondents / original plaintiffs had filed Special Civil Suit No. 250 of 2002 before Civil Judge Senior Division, Jalgaon for recovery of amount of Rs. 4,73,277/-. Plaintiffs had contended that there are the different agricultural lands. Plaintiff No. 1 had taken those lands for cultivation. They had taken banana crop. They had entered into contract of sale of banana with defendant. They had supplied bananas for the year 1998-1999 and 1999-2000. Pass-books were issued to them and entries about supply of bananas has been made. However, defendant has not paid the price of bananas. Hence, suit was filed for recovery of unpaid price with interest.

03. Defendant appeared in the matter, but failed to file written statement.

04. Plaintiffs had led oral evidence. Defendant

failed to cross-examine the witness of the plaintiffs. On the basis of oral as well as documentary evidence, the learned Ad-hoc District Judge, Jalgaon, has decreed the suit on 05-10-2004.

05. Initially defendant had preferred First Appeal No. 1153 of 2008 before this Court. The appeal was admitted, however, after the enhancement of pecuniary jurisdiction of District Court, the appeal was transferred to District Court Bhusawal. After it was renumbered as Regular Civil Appeal No. 405 of 2014; it was heard by learned District Judge-2, Bhusawal. The said appeal has been dismissed. Hence, this second appeal.

06. Heard learned Advocate Shri. M. M. Bhokarikar for appellant and learned Advocate Shri. C. D. Patil for respondents.

07. It has been vehemently submitted on behalf of appellant that both the Courts below have failed to consider that the suit was hit by mis-joinder of necessary parties as well as mis-joinder of causes of action. When all the plaintiffs have contended that they had supplied bananas grown from their respective fields to defendant, then each one of them is said to have separate cause of action. They could not have clubbed their own cause in one suit, as they have not come with a case that they had collectively entered

into contract with defendant. He relied on the decision in *Chandulal Suklal Shet v/s. Dagdu Mahadu Choudhari* [AIR 1925 Bom 342]; wherein it has been held that, *"It was quite impossible, therefore, for the plaintiffs to join in one suit five different causes of action on five different contracts made by five different plaintiffs.....Consequently, the suit must inevitably fail"*.

08. Another point that has been raised by the learned Advocate for appellant is that the suit, though filed in the Court of Civil Judge Senior Division; yet, it was transferred to the file of learned Ad-hoc District Judge, who was in fact, dealing with appellate jurisdiction. Thereafter, when the appeal was filed by the appellant before this Court, it was transferred to District Court after the enhancement in the pecuniary jurisdiction. Therefore, the decree that has been passed, is by an incompetent Court. Hence, deserve to be set aside.

09. Lastly, it was submitted on behalf of appellant that since the appellant could not get a proper opportunity to contest the matter, it be remanded to Trial Court for fresh hearing and disposal.

10. Per contra, the learned Advocate for respondents supported the reasons given by both the Courts below and submitted that point of jurisdiction was never raised by the defendant at any earlier point

of time. He had every opportunity to contest the matter, however, he has not taken that opportunity. There is no question of remand of the matter nor any substantial question of law is arising in this case.

11. The contents of the plaint shows that all the plaintiffs are owners of different pieces of land. At one breath they have contended that plaintiff No. 1 had taken lands of other plaintiffs for cultivation and at another breath they are contending that each one of them had entered into contract with defendant for the supply of bananas grown in their respective land. Further details have not been mentioned. Then they say that pass-book was given to each one of them by the defendant. Based on the entries in the pass-book, they appeared to have filed suit. Therefore, it ought to have been seen by both the Courts below as to what was the reason and how they could have filed the suit collectively. Though law requires that the objection in respect of non-joinder or mis-joinder of necessary parties as well as cause of action should be taken at initial stage, yet if it is apparent or even doubt about it can be seen on the face of the record, then unless that point is not got clarified, both the Courts below ought not to have gone ahead with passing of the decree. That clarification is certainly needed in this case. Under such circumstance, without going into the aspect that whether defendant had proper opportunity to defend or not as well as, as regards

jurisdiction point; it is in the interest of both the parties to remand the matter for fresh consideration and disposal according to law. The suit was filed in proper Court, if on any administrative side, an error is committed by Court by transferring the matter and no objection was raised at that time, then plaintiffs can not be non-suited on that count.

12. Hence, the following order :-

The appeal stands partly allowed.

The judgment and decree passed by both the Courts below stands set aside. The matter stands remanded to the Trial Court for disposal according to law.

The said suit i.e. Special Civil Suit No. 250 of 2002 is hereby restored to the file of Civil Judge Senior Division, Bhusawal, Dist. Jalgaon.

Both the parties to appear before Trial Court on 02-08-2019.

Defendant is directed to file written statement to the suit on or before 13-08-2019. This time limit will not be extended in any case.

After the written statement is filed, Trial Court to proceed as per law and decide the suit as expeditiously as possible, and dispose of the suit by the end of this year.

Needless to say, Trial Court to give opportunity to both sides to lead evidence.

Parties shall co-operate and shall not take unnecessary adjournment.

No order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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