

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2544 OF 2018

Vishwanath Baloba Nannajkar

.. Petitioner

V/s.

Dilip Baburao Nannajkar
(deceased thru Lrs.) & Ors.

.. Respondents

Mr.Umesh R. Mankapure for the petitioner

Mr.S.D.Thokade for the respondent

CORAM: K.K. TATED, J
DATED : JANUARY 15, 2019

P.C. :

1 Heard.

2 After arguing for some time, both the counsel submitted minutes of order dated 15.01.2019 duly signed by respective advocates. Same is taken on record and marked 'X' for identification. Same is accepted which reads thus:

"CONSENT MINUTES OF ORDER"

1. *The Petition under Article 227 of the Constitution of India challenges the impugned order dated 17.11.2017 passed by Ld. Ad-Hoc District Judge-1 and Asst. Sessions Judge, Barshi below Exh. 61 in R.C.A. No. 163/2014.*

2. *The Petitioner herein is original Plaintiff who has filed suit bearing R.C.S. No. 499/2002 seeking relief of injunction. The said suit was filed on 13.08.2002. The Defendant/Respondent herein filed there Written Statement as well as counter claim and same was filed on 06.01.2003.*
3. *After the pleadings where completed, issues were framed by the Ld. Trial Court both the parties adduced their evidence and thereafter the suit bearing R.C.S. No. 499/2002 was decreed by Judgment and Decree dated 20.02.2012 by the Ld. Joint Civil Judge Senior Division, Barshi.*
4. *The Defendant/Respondent herein preferred Appeal bearing Regular Civil Appeal No. 163/2014 before the Ld. District Judge, Barshi. The said appeal was allowed by Ld. District Judge by Judgment and decree dated 13.10.2015.*
5. *The Petitioner herein, who was the original Plaintiff preferred an appeal before this Hon'ble High Court bearing Second Appeal No. 163/2016. By Judgment and decree dated 20.12.2016, this Hon'ble High Court was pleased to set aside the Judgment and decree of the Ld. First Appellate Court and matter was remanded back to the First Appellate Court with a direction to dispose off the First Appeal with in the period of 1 year.*
6. *After the matter was remanded back by this Hon'ble High Court, on 03.11.2017, the Respondent herein preferred an application seeking amendment of the plaint. The Petitioners herein oppose the said application for amendment and prayer was made to reject*

the application.

7. *The Ld. Ad-Hoc District Judge-1 and Asst. Sessions Judge, Barshi by order dated 17.11.2017 was pleased to allow the Application below Exh. 61 in R.C.A. No. 163/2014 and hence the present Petition is filed by the Petitioner challenging the said order.*
8. *After hearing both the parties at length and considering the controversy involved following order is substituted.*

ORDER

- a. *The impugned order dated 17.11.2017 passed by Ad-hoc District Judge-1 and Asst. Sessions Judge, Barshi below Exh. 61 in R.C.A. No. 163/2014 is quashed and set aside.*
- b. *The Defendants/Respondents herein are at liberty to refer and/or to produce on record the certified copies of Judgment and decree in earlier round of litigation i.e. in Special Civil Suit No. 80/1972 and all consequential the certified copies of Judgment and Order passed upto the Hon'ble High Court in those proceedings. The Ld. First Appellate Court will read the Judgment and Decree of earlier litigations in accordance with the provision of Indian Evidence Act and decide the appeal on its own merits.*
- c. *The Writ Petition is disposed of in above terms with no order as to the costs."*

3 Writ Petition stands disposed of in terms of minutes of order.

4 No order as to costs.

(K.K. TATED, J.)