

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.239 OF 2017

Mujib Ahmed Mohd. Mustafa and others ... Applicants
Vs.
Mohammed Salim Abdul Khalique ... Respondent

WITH
CIVIL REVISION APPLICATION NO.380 OF 2017

Mujib Ahmed Mohd. Mustafa and others ... Applicants
Vs.
Chandrakant Hiranman Gavali ... Respondent

Mr. N. R. Bubna for Applicants in both the Applications.
Mr. Anilkumar Patil for Respondents in both the Applications.

CORAM : R. G. KETKAR, J.
DATE : MARCH 26, 2019

P.C. :

Heard Mr. Bubna, learned Counsel for the applicants and Mr. Patil, learned Counsel for the respondents in both the Applications at length.

2. Civil Revision Application No.239 of 2017 takes exception to the judgment and decree dated 07.11.2016 passed by the learned District Judge-3, Malegaon in Regular Civil Appeal No.52 of 2011. By that order, the learned District Judge quashed and set aside the judgment and decree dated 27.04.2011 passed by the learned Joint Civil Judge Senior Division, Malegaon in Regular Civil Suit No.210 of 2009. The Suit filed by the plaintiffs was dismissed.

3. Civil Revision Application No.380 of 2017 takes exception to the judgment and decree dated 07.11.2016 passed by the learned District Judge-3, Malegaon in Regular Civil Appeal No.19 of 2014. By that

order, the learned District Judge quashed and set aside the judgment and decree dated 16.01.2014 passed by the learned 3rd Joint Civil Judge Senior Division, Malegaon in Regular Civil Suit No.211 of 2009. The Suit filed by the plaintiffs was dismissed.

4. Rule. Mr. Patil waives service for respondents in both the Applications. At the request and by consent of the parties, Rule is made returnable forthwith and the Applications are taken up for final hearing.

5. After arguing the Applications for quite some time, the learned Counsel for the parties submitted that the impugned orders in both the Applications may be set aside and the Suits may be restored to the file of the trial Court for deciding it afresh on the basis of the evidence already on record. They further assure that parties will appear before the trial Court on 08.04.2019 and for that purpose, no fresh notice be issued to them.

6. In view thereof, by consent of the parties, Civil Revision Applications are disposed of in the following terms:

- a. Impugned orders dated 07.11.2016 passed by the learned District Judge-3, Malegaon in Regular Civil Appeal No.52 of 2011 as also in Regular Civil Appeal No.19 of 2014 are quashed and set aside;
- b. Regular Civil Suit No.210 of 2009 and Regular Civil Suit No.211 of 2009 are restored to the file of the learned trial Judge;
- c. The following additional issue shall be framed:
“Whether the plaintiffs are entitled to decree on the ground of denial of title in both the Suits.”
- d. Parties shall appear before the trial Court on 08.04.2019 and

for that purpose, no fresh notice be issued to them. On that date, the learned trial Judge will fix a suitable date and will endeavour to dispose of the Suits within 6 months from the date of fixing suitable date;

- e. The learned trial Judge will decide the Suits on the basis of the evidence already on record;
- f. All contentions of the parties on merits are expressly kept open;
- g. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

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