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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.853 OF 2016
WITH
CIVIL APPLICATION NO.1678 OF 2016

Shankar V. Bodake, since deceased through His L.Rs. - R.S. Bodake & Ors. V/s. Jalinder S. Bodake, since deceased through His L.Rs. - S.J. Bodake & Ors.	...Appellants ...Respondents
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Mr.V.A. Desai i/b Ms.Nirmala V. Gopal for the Appellants.

Mr.S.B. Deshmukh for the Respondent Nos.1-A, 1-B, 2 and 3.

CORAM : R.D. DHANUKA, J.
DATE : 20TH AUGUST, 2019.

P.C. :-

1. By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original defendant nos.1 and 3 to 9 have impugned the judgment and decree dated 16th June, 2016 passed by the learned District Judge – 2, dismissing the appeal filed by the appellants herein however, at the same time modified the decree and granted the larger share in favour of some of the parties, though there was no cross appeal or cross-objection filed by the respondents.

2. At this stage, learned counsel for the parties jointly state that their respective clients have no objection if the judgment and decree dated 16th June, 2016 passed by the learned District Judge in

Regular Civil Appeal No.31 of 2011 is set aside and the appeal is remanded back to the learned Judge for deciding the matter afresh. Statement is accepted.

3. I therefore, pass the following order :-

a). By consent of parties, the impugned judgment and decree dated 16th June, 2016 passed by the learned District Judge – 2, Niphad in Regular Civil Appeal No.31 of 2011 is set aside. Regular Civil Appeal No.31 of 2011 is restored to file and to be decided afresh in accordance with law.

b). It is made clear that the learned Judge shall not be influenced by the reasons recorded and the conclusion drawn in the judgment and and decree dated 16th June, 2016 passed in Regular Civil Appeal No.31 of 2011 and shall decide the matter on its own merits.

c). Both the parties are directed to appear before the learned District Judge on 28th August, 2019 at 10.30 a.m. to enable the learned Judge to fix the next date of hearing.

d). Learned District Judge shall make an endeavor to dispose of the said Regular Civil Appeal No.31 of 2011 within four months from the date of the communication of this order. The parties shall not

ask for any unnecessary adjournment before the learned Judge.

4. The second appeal is disposed of on aforesaid terms.
5. In view of the disposal of the second appeal, Civil Application No.1678 of 2018 does not survive and is accordingly disposed of. There shall be no order as to costs.
6. All parties as well as the Appellate Court to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)