

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 814 OF 2017****WITH****CIVIL APPLICATION NO. 1079 OF 2017****IN****APPEAL FROM ORDER NO. 814 OF 2017**

Anil Ramchandra Pawar

.....Appellant.

Vs.

Santosh Shrimant Ghadage & Ors.

.....Respondents.

Mr. Ajay Joshi for the Appellant.

Mr. S.S. Aradhye for the Respondent Nos. 1 to 4.

CORAM : A. S. GADKARI, J.**DATE : 18th NOVEMBER, 2019.****P.C.:-**

By the present Appeal, the Appellant has impugned Judgment and Order dated 11th May, 2017, passed in Regular Civil Appeal No. 6 of 2014 by the learned District Judge 2, Pandharpur, thereby allowing the said Appeal and setting aside the Judgment and Decree dated 18th December, 2013 passed as per Order on Exhibit 18 in Special Civil Suit No. 38 of 2012 by the learned Civil Judge, Senior Division, Pandharpur and remanded the said Suit back to the Trial Court for hearing afresh on the point of limitation by framing additional issue in that behalf. The Appellate Court has also issued further direction to the Trial Court for its consideration, in view of

the discussion enumerated in the impugned Judgment and Order.

2 The record indicates that, the Respondents/Original Plaintiffs have filed a Suit for vacant and peaceful possession of the Suit property along with mesne profits accrued over it, against the Appellant. In the said Suit, the Trial Court had framed 11 issues below Exhibit 16. The evidence of Respondent (PW. No.1) was being recorded. When the Suit was posted for recording further evidence of the Respondent, the Appellant preferred an Application below Exhibit 18, with a contention that, the said Suit was not filed within a period of limitation.

The Trial Court by its Order dated 18th December, 2013 passed below Exhibit 18, was pleased to allow the said Application with costs by holding that, the Suit filed by the Respondent is not within the period of limitation and proceeded to dismiss the said Suit under Order 7 Rule 11(d) of the Code of Civil Procedure.

In an Appeal, preferred by the Respondents, the Appellate Court has remanded the matter back to the Trial Court for its consideration afresh, as noted in the foregoing paragraph.

3 A minute perusal of the impugned Judgment and Order dated 11th May, 2017 would clearly indicate that, the same is passed well within the conformity of ratio laid down by the Hon'ble the Supreme Court in the case of *Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust & Ors.* reported in (2006) 5 SCC 658.

4 It is the trite position of law that, the question of limitation is a mixed question of law and fact. It further appears that, the observations made by the Appellate Court and findings recorded by it, cannot be said to be perverse. In view thereof, this Court is of the considered view that, the impugned Judgment and Order passed by the Appellate Court, does not suffer from any error, either in law or on facts and requires no interference by this Court in its jurisdiction under Order 43 of the Code of Civil Procedur.

Appeal being dehors of merits, is accordingly dismissed.

In view of the dismissal of the Appeal itself, Civil Application No. 1079 of 2017 does not survive and is also disposed off.

5 It is needless to mention that, the Trial Court shall not get influenced by the observations made by this Court while deciding the present Appeal and shall decide the Application as per the directions and observations made by the Appellate Court in the impugned Order.

(A.S. GADKARI, J.)