

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

**WRIT PETITION NO.663 OF 2018**

Narmadabai w/o Ramnath Patalbanshi, Buldhana

-vs-

Sushil s/o Balmurlidhar Gaikwad and ors.

**WITH**

**APPEAL AGAINST ORDER NO.48 OF 2018**

Narmadabai w/o Ramnath Patalbanshi, Buldhana

-vs-

Sushil s/o Balmurlidhar Gaikwad and ors.

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

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Shri S. R. Charpe, Advocate for petitioner/applicant.

Shri R. L. Khapre, Advocate for respondent Nos.1 and 2.

Shri S. S. Deshpande, Advocate for respondent Nos.3 & 4.

**CORAM : A.S.CHANDURKAR, J.**

**DATE : August 14, 2019**

Both the proceedings are heard together and decided finally.

In Appeal Against Order No.48/2018 the order passed by the appellate Court in R.C.A. No.84/2014 dated 09/06/2017 thereby remanding the proceedings in R.C.S. No.192/2012 for fresh trial is under challenge. The appellant who was the defendant No.4 in R.C.S.No.192/2012 is principally aggrieved by the observations made by the appellate Court in paragraphs 11, 15 and 20 of the judgment of the appellate Court while remanding the proceedings. It is submitted by Shri S. R. Charpe, learned counsel for the appellant that in those paragraphs it has been observed that the

sale-deed dated 12/12/1989 did not confer title upon the defendants in the suit. In paragraph 15 it has been further observed that it was not necessary for the plaintiffs to seek any declaration that alienation of the property in question was *void ab initio*. Further in paragraph 20 it has been observed that the transfer of the suit property by the grandfather of the plaintiffs on 12/12/1989 was *void ab initio*. This transfer was in favour of the defendant No.4. It is submitted that in view of these observations which were uncalled for while remanding the proceedings, prejudice would be caused to the original defendant No.4. Hence challenge has been raised to the order passed by the appellate Court.

2. Shri R. L. Khapre, learned counsel for the original plaintiffs submitted that after remand of the proceedings the name of defendant No.4 has been struck off from the array of parties. He further submits that those observations therefore would not come in the way of said respondent No.4. He supported the order of remand as passed by the appellate Court.

3. On hearing the learned counsel and on perusing the impugned judgment it is seen that the trial Court had initially on

22/07/2013 rejected the plaint in R.C.S. No.192/2012 under provisions of Order VII Rule 11 of the Code of Civil Procedure 1908 (for short, the Code). The appellate Court found that while passing the said order the trial Court had travelled beyond the pleadings in the plaint. On perusal of the order passed by the trial Court and thereafter by the appellate Court on 09/06/2017 it is seen that the appellate Court was justified in remanding the proceeding for fresh trial to the trial Court. At the same time as the suit was directed to be tried, the observations as made in paragraphs 11, 15 and 20 were likely to cause prejudice to the case of the defendant No.4 after remand. Those observations were unwarranted in the light of the fact that the proceedings in the suit had been remanded. It is therefore necessary to clarify that observations of the appellate Court in paragraphs 11, 15 and 20 would not come in the way of the defendant No.4 in any further proceedings if sought to be initiated by the said defendant No.4. With these observations the judgment of the appellate Court in R.C.A. No.84/2014 stands maintained and Appeal against Order No.48 of 2018 is disposed of.

4. In Writ Petition No.663/2018 the petitioner who is the original defendant No.4 has challenged the order dated

26/09/2017 that has been passed below Exhibit-43 deleting the name of said defendant from the array of parties. A further challenge has been raised to the order passed below Exhibit-51 on 15/01/2018 by which the application filed by the said defendant under provisions of Order I Rule 10(2) of the Code for being impleaded again as defendant No.4 has been rejected.

5. Shri S. R. Charpe, learned counsel for the petitioner submits that the order passed below Exhibit-43 was without granting any opportunity to the defendant No.4. Since the defendant No.4 was already impleaded he also ought to have been heard before his name was deleted from the array of parties. As regards the order passed below Exhibit-51 it is submitted that by incorrectly observing that the presence of defendant No.4 was not necessary in the suit that application has been rejected. Presence of the petitioner as defendant No.4 was necessary in the suit.

6. Shri R. L. Khapre, learned counsel for the respondent Nos.1 and 2 submitted that after the suit was remanded by the appellate Court the plaintiffs and the defendant Nos.1 to 3 entered into compromise on the basis of the mediation report which was at Exhibit-48. As per that settlement the plaintiffs have received

possession of the suit property from the defendant Nos.1 to 3. He further submits that in the plaint no relief had been sought against the defendant No.4 and possession had been sought only from the defendant Nos.1 to 3. He therefore submitted that in view of these subsequent developments it would be necessary for the petitioner herein to take further steps as are permissible in law if he is aggrieved by the compromise entered into between the plaintiffs and the defendant Nos.1 to 3. No relief had been sought in the suit against the defendant No.4.

7. After the proceedings were remanded by the appellate Court the name of defendant No.4 was deleted on 26/09/2017 by the plaintiffs on the ground that no relief was being claimed against the said defendant. Thereafter on 05/10/2017 the trial Court received the report of mediation which is at Exhibit-48 and has recorded compromise between the parties. As a result of the interim stay granted by this Court on 02/02/2018 further progress in the suit by passing any order below Exhibit-1 is not been possible. Though it is true that the defendant No.4 ought to have been heard before her name was deleted, in the facts of the present case it is found that no useful purpose would be served in now directing addition of the defendant No.4 in the suit. The

plaintiffs and the defendant Nos.1 to 3 have compromised the proceedings. As noted above, no relief was sought against the defendant No.4 and the compromise does not include her name. In these facts therefore the interests of justice would be served by reserving liberty in favour of defendant No.4 to take such steps as are permissible in law if she is aggrieved by the compromise of the proceedings between the plaintiffs and the defendant Nos.1 to 3. Needless to state since the proceedings have been compromised between the plaintiffs and the defendant Nos.1 to 3, question of the same binding the petitioner who was not party to the same would not arise.

With these observations Writ Petition No.663 of 2018 is disposed of. No order as to costs.

**JUDGE**