

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 27 OF 2015**

Rajaram Bandekar (deceased)
through his legal representative
Narayan R. Bandekar, Nitin Chambers,
Near LIC Office,
Vasco da Gama, Goa
represented herein through its
constituted Attorney
Shri N. P. Vasu Nair,
major of age,
residing at Vasco da Gama, Goa. ... Appellant

Versus

Comunidade of Sirsaim,
through Vilas Parab,
Attorney, with office at Sirsaim,
Bardez Goa ... Respondent

Mr. A. F. Diniz, Senior Advocate with Mr. Ashwin D. Bhobe, Advocate
for the Appellant.

Mr. Gaurish N. Agni, Advocate for the Respondent.

Coram:- M. S. SONAK, J.

Date:- 29th October, 2020

ORAL JUDGMENT

Heard Mr. A. F. Diniz, learned Senior Advocate alongwith
Mr. A. D. Bhobe, learned counsel for the Appellant and Mr. Gaurish
Agni, learned counsel for the Respondent.

2. After the matter was argued for some time, the learned

counsel for the parties submit that the impugned judgment and order dated 30.01.2015 made by the Ad-hoc District Judge-1,(FTC)- First Appellate Court can be set aside and the matter be remanded to the First Appellate Court to decide Regular Civil Appeal No.19/2014 afresh. The learned counsel for the parties point out that in this appeal the Respondent i.e. Comunidade of Sirsaim has now filed an application under Order 41 Rule 27 of the CPC for consideration of additional documents. They submit that rather than this Court decide the admissibility or otherwise of the additional evidence such issue can be best left to be determined by the First Appellate Court itself.

3. Accordingly, on the basis of the consent and without going into the rival contentions on merits of the impugned judgment and order dated 30.01.2015, the same is hereby set aside. Regular Civil Appeal No.19/2014 is restored to the file of the First Appellate Court which shall now dispose of Regular Civil Appeal No.19/2014 on its own merits and in accordance with law without being influenced by the impugned judgment and order dated 30.01.2015 which, in any case, is now set aside. Further, alongwith the appeal, the First Appellate Court, to take into consideration and decide in accordance with law the Respondent's application under Order 41 Rule 27 of the CPC. Accordingly, liberty is granted to the Respondent to file such application before the First Appellate Court in terms of the application filed before this Court.

4. It is made clear that all contentions of all parties are expressly left open for decision of the First Appellate Court in Regular Civil Appeal No.19/2014 which is restored to its file as also the application under Order 41 Rule 27 of the CPC which the Respondent herein, will, file within a period of 15 days from today to take up before the First Appellate Court.

5. Parties to appear before the appropriate First Appellate Court on 1st December, 2020 at 10.00 a.m. and file authenticated copy of this order.

6. The First Appellate Court is directed to dispose of Regular Civil Appeal No.19/2014 as also the application under Order 41 Rule 27 of the CPC as expeditiously as possible.

7. This appeal and pending miscellaneous application is disposed of in the aforesaid terms. There shall be no order as to costs.

8. All concerned to act on the basis of the authenticated copy of this order.

M. S. SONAK, J.

at*