IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 37147 OF 2018

WITH

CIVIL APPLICATION (STAMP) NO. 2687 OF 2019

IN

APPEAL FROM ORDER (STAMP) NO. 37147 OF 2018

Somnath S/o. Bandappa Choudyal .....Appellant.

Vs.

Bandappa S/o. Yashwant Choudyal
(Since Deceased) Thr. LRs. & Ors. .....Respondents.

Mr. Ajit Alange for the Appellant.
Mr. Prasad Kulkarni for the Respondent Nos. 3-1 and 4.

CORAM : A. S. GADKARI, J.
DATE : 11th FEBRUARY, 2020.

P.C.:-

By the present Appeal, the Appellant, Original Defendant No.1, has impugned Judgment and Order dated 18th September, 2018 passed by the learned District Judge 2, Solapur in Regular Civil Appeal No. 34 of 2010, thereby, remanding the Regular Civil Suit No. 1354 of 2001 back for fresh trial with direction to the Respondents-Plaintiffs to add the legal heirs of Yashwantappa i.e. Satyavva Yeshwantappa Choudyal and Pundappa

Yeshwantappa Choudyal and their legal heirs to the main Suit. In view thereof, the Appellate Court set aside the Judgment and Decree dated 1st November, 2007, passed in Regular Civil Suit No. 1354 of 2001 filed by the Respondents herein.

2 Heard Mr. Alange, learned counsel for the Appellant and Mr. Kulkarni learned counsel for the Respondents. Perused the record.

3 The record indicates that, the Respondents had filed the aforestated Regular Civil Suit No. 1354 of 2001 for partition of the Suit property. It is the contention of the Respondents that, the Suit property is ancestral property acquired by Yeshwantappa i.e. the father of Original Plaintiff No.1. That, the Suit property was owned by Yeshwantappa and during his life time, he directly transferred the said property in favour of the Appellant herein without adopting proper legal procedure in that behalf.

After receipt of the summons of the said Suit, the Appellant appeared therein and raised an issue of non-joinder of necessary parties to the said Suit. It was the contention of the Appellant that, the other brothers of Plaintiff No.1, i.e. Satyavva Choudyal and Pundappa Choudyal have not been joined as a necessary parties to the said Suit for partition of the Suit propertty of his father Yeshwantappa. The Trial Court had framed issue No.6 to that effect.

The Trial Court after recording evidence and after hearing the parties to the said Suit, was pleased to dismiss it by its judgment and Order dated 1st November, 2007.

In an Appeal preferred by the Respondents bearing Regular Civil Appeal No. 34 of 2010, the Appellate Court has set aside the Judgment and Order dated 1st November, 2007 passed by the Trial Court and has remanded the matter back for a fresh trial, along with the aforestated directions in that behalf.

4 As noted earlier, it is at the request of the Appellant herein, the Trial Court had framed an issue pertaining to the non-joinder of necessary parties to the said Suit and while answering the said issue has held that, the Suit is bad in law for non-joinder of necessary parties.

The Appellate Court *inter-alia* has directed the Respondents to implicate the other brothers namely Satyavva Choudyal and Pundappa Choudyal as necessary parties to the said Suit and to hear the said Suit afresh.

5 Perusal of the impugned Judgment and Order would indicate that, the Appellate Court has also taken into consideration the said fact and the issue raised by the Appellant herein regarding non-joinder of necessary parties.

I find that, the view adopted by the Appellate Court is a judicious view and needs no interference in that behalf.

6 After perusing the entire record, this Court is of the considered view that, the Appellate Court has not committed any error while passing impugned Judgment and Order.

There are no merits in the Appeal and is accordingly dismissed.

In view of dismissal of Appeal itself, Civil Application (Stamp) No.2687 of 2019 does not survive and is also disposed off.

Sanjiv S. Mashalkar

Digitally signed by Sanjiv S. Mashalkar
Date: 2020.02.20 17:40:25 +0530

(A.S. GADKARI, J.)