

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.770 OF 2015

Sarala Padmakar Joshi	..	Appellant
Vs.		
Sunil Padmakar Joshi & Ors.	..	Respondents

Mr.Siddharth C. Wakankar for the appellant.
Mr.Pralhad D. Paranjape i/by Mr.Rushabh Sheth for the respondent
nos.1 to 4.

CORAM : R.D.DHANUKA, J.
DATE : 24th February 2020

P.C.:

. Learned counsel for the respondent nos.1 to 4, on instructions from the respondent no.1- Sunil Padmakar Joshi who is present in Court states that his client has no objection if the impugned judgment and decree dated 28th April 2015 passed by the learned 3rd Joint Civil Judge, Senior Division, Pune in Regular Civil Suit No.1267 of 2006 is set aside and the said proceedings are restored to file before the learned Civil Judge, Senior Division, Pune and if the matter is decided afresh and in accordance with law. Statement is accepted.

2. I therefore pass the following order :-

(i) The judgment and decree dated 28th April 2015 passed by the learned 3rd Joint Civil Judge, Senior Division, Pune in RCS No.1267 of 2006 is set aside.

- (ii) RCS No.1267 of 2006 is restored to file.
- (iii) The appellant would be at liberty to file written statement within four weeks from today to the said RCS and serve a copy thereof upon the plaintiff's advocate simultaneously. It is made clear that no further extension of time would be granted.
- (iv) The appellant is 84 years old. Hearing of the said RCS No.1267 of 2006 is expedited.
- (v) Parties are directed to co-operate with each other and with the learned Civil Judge, Senior Division, Pune to dispose of the said RCS expeditiously and shall not seek any unnecessary adjournment.
- (vi) The learned Civil Judge, Senior Division, Pune shall decide the matter afresh and on its own merit without being influenced by the observations made and the conclusions drawn in the order dated 28th April 2015 passed by the Trial Court.
- (vii) Trial Court to dispose of the said suit within six months from the date of the appellant filing written statement.
- (vii) It is made clear that this Court has not expressed any views of the matter.
- (ix) All contentions of both the parties are kept open.

3. Learned counsel for the respondent nos.1 to 4, on instructions, continues the statement made before this Court that his

client would not create any third party rights during the pendency of this suit and for a period of four weeks thereafter in the event that the suit is being decided by the Trial Court.

4. The appellant shall also not create third party rights in respect of the suit property during the pendency of the suit and for a period of four weeks thereafter if the suit is adverse against the original plaintiffs.

5. The respondent nos.1 to 4 shall not dispossess the appellant during the pendency of the First Appeal and for a period of four weeks thereafter depending upon the outcome of the First Appeal.

6. First appeal is disposed of on aforesaid terms. In view of disposal of the First Appeal, pending civil applications do not survive and are accordingly disposed of.

R.D.DHANUKA, J.