

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPEAL FROM ORDER NO.14 OF 2020
WITH
CIVIL APPLICATION NO.3479 OF 2020**

Dilip Govind Holkar,
Age:77 years, Occ. Agri.,
r/o. At post Taloda,
Dist. Taloda, Dist. Nandurbar
and ors.

..Appellants

Vs.

Chandrakant Ambadas Wani,
Age:70 years, Occ. Agri.,
all r/o. Kakasheth Galli,
Taloda, Tq. Taloda,
Dist. Nandurbar

..Respondents

Mr.S.P.Brahme, Advocate for appellants
Mr.G.D.Jain, Advocate for respondent

**CORAM : R.G. AVACHAT, J.
DATE : AUGUST 23, 2021**

ORDER :-

The challenge in this appeal is to the order dated 03.12.2019 passed in Regular Civil Appeal No.51 of 2011, remanding the suit back to the trial Court for hearing and decision on merit.

2. Perused the impugned order to find that a concession was made by learned counsel for the appellant herein, whereby the

judgment and decree passed by the trial Court was set aside, remanding the matter back to the trial Court.

3. According to learned counsel for the appellants the concession was limited. According to him, the submission before the first appellate Court, was that by framing necessary issue keeping the appeal pending before the first appellate Court, the suit be remanded to the trial Court for hearing on particular issue and solicit finding thereon.

4. The appellate Court has observed that learned counsel for the respondents therein had given consent for remanding the matter back to the trial Court. What has been submitted by learned counsel here, is not appearing from the impugned order. Needless to mention that the factual observations made in the judgment and order are presumed to be correct, unless otherwise is shown. There is nothing on record to observe other way round.

5. On merit as well, I find the impugned order to be just and therefore, find no reason to make interference therewith, since initially, it was a suit for declaration and perpetual injunction. After dismissal of the suit, the plaint was amended in appeal. The suit for

injunction was converted into suit for possession. It is the case of the respondent/plaintiff that pending the suit, some encroachment was made on the suit land and therefore, relief of possession was sought for. In the facts and circumstances of the same, the suit requires to be decided afresh, as it has now become substantial suit for possession of the suit land. The appeal fails and is dismissed. The Civil Application stands disposed of.

[R.G. AVACHAT, J.]

KBP