

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

SECOND APPEAL NO. 899 OF 2016

Baburao S/o. Ganpatrao Jathar (Kalal)
Age- 74 years, Occu.: Business,
R/o. Shikshak Colony, Osmanabad,
Tq. & Distt. Osmanabad.

.... **APPELLANT.**
(Org. Plaintiff)

// **VERSUS** //

1. The State of Maharashtra,
Through Collector, Osmanabad
2. The Superintendent, State Excise Office,
Central Building, Osmanabad.
3. Narsiyya S/o. Ramiyya Gavda (died)
Through his Legal Heirs:
 - 3-A) Yadgir S/o. Narsiyya Gavda,
Age-54 years, Occ. Business,
 - 3-B) Arjun S/o. Narendra Gavda,
Age-32 years, Occ. Business,
 - 3-C) Sweeti D/o. Narendra Gavda,
Age-21 years, Occ. Household,
 - 3-D) Lata W/o. Narendra Gavda,
Age-51 years, Occ. Household,

All R/o. Ausa, Tq. and Dist. Latur.

.... **RESPONDENTS.**
(Org. Defendants)

Ms Pradnya S.Talekar, Advocate for Appellant.
Shri S.S.Dande, A.G.P for Respondent Nos. 1 and 2.
Shri R.N.Dhorde, Senior Advocate a/b. Shri P.K.Joshi, Advocate for
Respondent Nos.3-A to 3-D.

CORAM : ANIL S. KILOR, J.

DATE OF RESERVING THE JUDGMENT : 30/04/2021
DATE OF PRONOUNCING THE JUDGMENT: 16/07/2021

JUDGMENT :

1. Heard.

2. The appellant, original plaintiff by way of present appeal, has questioned the legality and correctness of the judgment and decree dated 05/10/2016 passed by the District Judge-1, Omerga in Regular Civil Appeal No.08 of 2015 upholding the judgment and decree dated 15/01/2015 passed by the Civil Judge Senior Division, Omerga in Regular Civil Suit No.08 of 2010, whereby the suit for declaration and perpetual injunction filed by the plaintiff was dismissed.

3. For the sake of clarity, convenience and apposite appreciation, I shall state the facts from Regular Civil Suit No. 08 of 2010 (The parties are referred as per their status in the suit).

4. It is the case of the plaintiff that the country liquor licence in question, bearing No. CL-III No.38 of Omerga-2 was originally granted in the name of one Irrayya Ramayya in the year 1973-74. The defendant No.3 Narsayya joined him as partner in the year 1982-83 and after demise of Irrayya, the name of Irrayya's wife Laxmibai was inducted and on retirement of Laxmibai, the licence was transferred in the sole name of the defendant No.3, on 13/02/2002.

5. It is the further case of the plaintiff that due to ill-health the defendant No.3, expressed his willingness to the plaintiff, to part with his licence and business. Thereupon, the plaintiff paid Rs.10,00,000/- to the defendant No. 3, on 05/01/2008 and got executed an agreement. Thereafter on 18/01/2008 the plaintiff paid Rs.12,30,600/- and entered into a partnership with the defendant No.3. Accordingly, name of the plaintiff was inducted in the licence as a partner (to the extent of 60%) on 17/06/2008.

6. It is further contended that on 08/07/2008 he paid Rs.8,20,400/- to the defendant No.3 and on the same day the defendant No.3 made an application to the defendant No.1-Collector for transfer of his remaining 40% share in the name of the plaintiff and deleting his name from the licence, being retired from the partnership firm. The plaintiff further pleads that suddenly on 09/01/2009 the defendant No.3 made an application to the Collector through his Advocate, asserting that he had dissolved the partnership by issuing notice to the plaintiff under Section 43(1) of the Indian Partnership Act, 1932. Thereafter on 23/01/2009 the defendant No.3 requested the Collector for deletion of his name from the licence. Consequently, the Collector deleted the name of the plaintiff, vide order Dated 24/03/2010.

7. Feeling aggrieved by the same, the plaintiff carried an appeal to the Commissioner, State Excise. The Commissioner granted stay to the said order Dated 24/03/2010. In the meantime, on 07/06/2010 the plaintiff filed a suit for declaration and perpetual injunction with following reliefs:

“A) The plaintiff be declared as sole licensee of the licence bearing No. CL III 38/08-09 of Omerga.

B) The decree of perpetual injunction be passed against the Defendant No.1 and 2 restraining them from deleting the name of the Plaintiff from the licence bearing NO. CL III 38/08-09 of Omerga ta. Omerga dist. Osmanabad.

C) The decree of perpetual injunction be passed against the Defendant No.3 restraining him and his relatives, servants etc. from interfering and obstructing in the above licence and business of the said licence run at Omerga ta. Omerga dist. Osmanabad by Plaintiff.

D) Any other legal and equitable relief to which the Plaintiff is legally and equitably entitled to may also be granted in favour of Plaintiff against the Defendants.”

8. The Defendant No.3 strongly resisted the suit by filing his written statement. The defendant No.3 admitted the fact of execution of Partnership Deed, however, denied receipt of amount by him from the plaintiff. It is also denied that he had made request to the Collector for transfer of the licence in the sole name of the plaintiff. The defendant No.3 states that he had dissolved the partnership by issuing notice under the provisions of the Partnership Act, 1932 and by publishing a notice in the newspaper “Dainik Punyanagari” on 15/01/2009. It is further stated that on dissolution of partnership, an application was moved to the Collector for deleting the name of the plaintiff, which was accepted and the name of the plaintiff was rightly deleted by the Collector, vide order dated 24/03/2010.

9. During pendency of the suit the defendant No.3 died and his legal heirs were brought on record as defendant Nos.3-A to 3-D.

10. The appeal preferred by the plaintiff before the Commissioner was dismissed vide order Dated 11/01/2011, against which a revision was carried to the Hon'ble Minister by the plaintiff, and the same came to be allowed remitting back the matter to the Collector for fresh decision. Presently the said decision is pending.

11. The learned trial Court dismissed the suit vide judgment and decree dated 5th January 2015. Feeling aggrieved by the same, the plaintiff preferred an appeal, which came to be dismissed vide impugned judgment and decree dated 05/10/2016. Hence, this appeal.

12. This Court, on 9th March 2017 framed following substantial questions of law :

“I) Whether the appellate Court's approach had been proper, holding civil court had no jurisdiction to deal with subject matter of the suit, having regard to factual antecedents involved in the matter?

II) Whether there has been failure on the part of the appellate court, to consider that injunction had also been sought against the defendant No.3 and his relatives, who had entered in to transactions with the plaintiff?

III) Whether Section 146 of the Maharashtra Prohibition Act, would put an embargo on civil court from consideration of the matter in respect of the relief of declaration sought?

IV) While holding in the first place that civil court had no jurisdiction, whether it would be proper for the appellate court to go ahead and decide and make observations in respect of the other aspects?

V) Whether the reliefs sought by the plaintiff can be said to be absolutely outside jurisdiction and scope of the powers of civil court?

VI) Whether the matter is liable to be remanded?"

13. I have heard the learned counsel for the respective parties.

14. Ms Talekar, learned counsel appearing for the appellant submits that the learned lower appellate Court has erred in holding that the Civil Court has no jurisdiction to entertain the suit and grant relief sought by the plaintiff in view of the provisions of Section 146 of the Bombay Prohibition Act, 1949 (hereinafter referred to as "the Act of 1949"). It is submitted that the rights created in view of the Partnership Deed, can only be decided by the Civil Court, whereas, the Collector has no jurisdiction under the provisions of the Bombay Prohibition Act, 1949 to enter into that arena. In support of her contention, she has placed reliance on the judgment of single Bench of this Court in a case of *Shripat Chaituji Mahajan..vs..Sanjay Radheshyam Jaiswal and others*¹.

15. She would submit that as the defendant No.3 is not disputing the fact of induction of name of the plaintiff as a partner to the extent of 60%, the respondent No.3 holding lesser interest in partnership cannot dissolve partnership. For this purpose, reliance has been placed upon the judgment of single Bench of this Court in the case of *Anant ..vs.. Govind*².

16. Ms Talekar, learned counsel for the appellant further submitted that deletion of name of the plaintiff by the Collector without waiting for the adjudication of the civil rights of the plaintiff, is arbitrary and not

¹ (2002) 5 Mah LJ 528

² (2005) 3 Mh.L.J. 384

permissible. It is submitted that the discretion invested in the Collector under the provisions of the Bombay Prohibition Act, 1949 to add or delete the name of any partner does not mean that the Collector can do what he wants and that too without any rhyme or reason. For this purpose, reliance has been placed on the judgment of the single Bench of this Court in the case of *Nilesh alias Narayan Y. Jadhav ..vs.. State of Maharashtra and others*¹

17. It is further submitted that the legal heirs of the defendant did not enter into witness box in support of their case and, therefore, an adverse inference needs to be drawn against the defendants as it is a settled law that the party which does not give oral or documentary evidence to support its case, the adverse inference must be drawn against such party. In this regard, the learned counsel for the appellant has placed reliance on the judgment of the Single Bench of this Court in the case of *Kisanlal Maniklal..vs..Dinkar Yashwant*².

18. Ms. Talekar, learned counsel for the appellant urged that the affidavit submitted by the defendant No.3 to the Collector for transferring his 40% share in the name of the plaintiff amounts to relinquishment of his rights. Hence, he is estopped from any contrary conduct. Reliance has been placed in support of the said contention, on a judgment of the Division Bench of this Court in the case of *Commissioner of Income Tax ..vs.. Natwarlal Mohanlal & Co.*³, and the judgment of Madras High Court in a case of *Karumuthu Thiagarajan Chettiar and another ..vs.. E.M. Muthappa Chettiar*⁴.

¹ 1991 Mah L.J. 770

² 2004(1) Mh.L.J. 138

³ 1975 SCC OnLine Bom 146

⁴ AIR 1961 SC 1225

19. It is further submitted that once the learned lower appellate Court has arrived at a conclusion that the Civil Court was not having jurisdiction, the Court ought not to have given findings on merits, holding that the partnership was contrary to the public policy.

20. It is further submitted that the documents, viz. a notice of dissolution of partnership and advertisement were not exhibited or proved by the defendant No. 3 and therefore, no reliance can be placed upon said documents to hold that the partnership was dissolved.

21. Per contra, Shri R.N. Dhorde, learned Senior Advocate assisted by Shri Prabhakar K. Joshi, learned counsel for the defendant Nos. 3-A to 3-D supports the impugned judgment and decree dated 05/10/2016.

22. Shri Dhorde, learned Senior Advocate submits that the reliefs sought in the plaint to declare that the plaintiff is the sole licensee of the licence and grant perpetual injunction, cannot be maintained by way of civil suit in view of the explicit bar created under Section 146 of the Bombay Prohibition Act, 1949. It is submitted that the learned lower appellate Court has, therefore, rightly held that the Civil Court has no jurisdiction to try the suit. In support of this contention he has placed reliance upon the judgments of the single Bench of this Court in the case of *Khodaram Sheriar Irani & others ..vs.. Damodar Shripal Bagal and another*¹ and *Uttam ..vs.. State of Mah.*².

¹ 1986 Mh.L.J.829

² 1998(1) Mh.L.J. 333

23. It is submitted that on issuance of notice for dissolution of partnership under the provisions of the Partnership Act, 1932 (hereinafter referred to as “the Act of 1932”), the partnership stood dissolved, resultantly the plaintiff cannot claim any relief through such partnership. For this purpose, Shri Dhorde, learned Senior Advocate has placed reliance on the following judgments of this Court :

- i) *Laxman V Kamble ..vs.. The Collector of Latur and others* in **Writ Petition No. 2924 of 2000**, dated 19th September 2000;
- ii) *Smt. Ashawwa Laxminarasayya Nagapuri ..vs.. State of Maharashtra & oth.* in **Writ Petition No. 4603 of 2000**, dated 5th July, 2010,
- iii) *Comm. of Income-tax, Madhya Pradesh ..vs.. Seth Govindram Sugar Mills*, reported in **AIR 1966 SC 24** and
- iv) *M/s. Balaji Constructions Co. ..vs.. Mrs. Lira Siraj Shaikh & ors.*, reported in **AIR 2006 Bombay 106**.

24. Lastly, the learned Senior Advocate argues that no interference is warranted in this matter as both the Courts below held against the plaintiff and particularly when the trial Court and the first appellate Court on appreciation of evidence concurrently gave finding of facts, which cannot be termed as perverse. For this purpose, he has placed reliance on a judgment of the Hon’ble Supreme Court of India in the case of *Syeda Rahimunnisa ..vs.. Malan Bi.*¹

25. To consider the rival contentions of the parties I have perused the record and proceedings and gone through both the judgments and decree of Courts below.

¹ 2016 SCC OnLine SC 1072

26. Taking up the first question as to whether the Civil Court has jurisdiction in the present matter. I am of the opinion that it would be beneficial to first refer to Section 9 of the Code of Civil Procedure, which reads thus:

“9. Courts to try all civil suits unless barred. - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I – A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II – For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.”

27. The Hon’ble Supreme Court of India in the judgment of *Dhulabhai Vs. State of M.P.*¹ has observed that, where the statute gives finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded, if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. It is further observed that where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. It is also observed that where there is no

¹ AIR 1969 SC 78

express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see, if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not. It is categorically observed that an exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

28. In a case of *P.M.A. Metropolitan vs. Moran Mar Marthoma*¹, while interpreting Section 9 of the Code of Civil Procedure His Lordship Justice R.M.Sahai, as he then was, has observed that one of the basic principles of law is that every right has a remedy. *Ubi jus ibi remedium* is the well known maxim. Every civil suit is cognizable unless it is barred, 'there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. The expansive nature of the Section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the Section to such religious matters where right to

¹ AIR 1995 SC 2001

property or office is involved irrespective of whether any fee is attached to the office or not. It is further observed that the language used is simple but explicit and clear. It is structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the Section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the Section by use of the word 'shall' and the expression, 'all suits of a civil nature' unless 'expressly or impliedly barred'. It is further observed that each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of right. The word 'shall' makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the Section. That is amplified by use of 'expression, 'all suits of civil nature'. The word 'civil' according to dictionary means, 'relating to the citizen as an individual; civil rights'. In Black's Legal Dictionary it is defined as, 'relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings'. In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc, were added to it later. But they too pertain to the larger family of 'civil'. There is thus no doubt about the width of the word 'civil'. Its width has been stretched further by using the word 'nature' along with it. That is even those suits are cognizable which are not only civil but are even of civil nature. It is further observed that the word 'nature' has been defined as, 'the fundamental qualities of a person or thing; identity or essential character; sort; kind; character'. It is thus wider in content. The word 'civil nature' is wider than the word 'civil proceeding'.

The Section would, therefore, be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of civil nature.

29. The Hon'ble Supreme Court of India in a case of *Sahebgouda vs. Ogeppa*¹, has held that it is well settled that a provision of law ousting the jurisdiction of the Civil Court must be strictly construed and onus lies on the party seeking to oust the jurisdiction to establish his right to do so.

30. In a case of *Abdul Gafur ..vs.. State of Uttarakhand*², the Hon'ble Supreme Court has held that Section 9 of the Act provides that Civil Court shall have jurisdiction to try all the suits of the civil nature excepting the suits of which their cognizance is either expressly or impliedly barred. To put it differently, as per Section 9 of the Code, in all types of civil disputes, civil courts have inherent jurisdiction unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision and conferred on other Tribunal or Authority. Thus, the law confers on every person an inherent right to bring a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by a statute.

31. In a case of *Church of North India ..vs.. Lavajibhai Ratanjibhai*,³ the Hon'ble Supreme Court of India has held that a plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the

¹ (2003) 6 SCC 151

² AIR 2009 SC 413

³ AIR 2005 SC 2544

reliefs sought for therein must be considered in their entirety. The Court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint.

32. Thus, it is clear that as per Section 9 of the Code there is an inherent right in every person to bring a suit where the dispute has the characteristic of affecting one's right which are not only civil but civil nature and all suits are cognizable unless barred.

33. In the backdrop of the above well settled position of law it would be proper to refer to Section 146 of the Bombay Prohibition Act, 1949 to examine, whether there is any explicit bar for filing of Civil Suit for the reliefs claimed by the plaintiff. Section 146 reads thus:

“146. Bar of proceedings. - No suit or proceeding shall lie against the [Government] or against any prohibition, police, or other officers or against any person empowered to exercise powers or to perform functions under this Act, for anything in good faith done or purporting to be done under this Act.”

34. The aforesaid provision makes it clear that, there is a bar to file a suit or any proceeding relating to anything done in good faith or purporting to be done by any of the authorities mentioned therein, in exercise of power under the Act 1949. This Court in the case of *Shripat Chaituji Mahajan..vs..Sanjay Radheshyam Jaiswal and others*¹ in paragraph No.11 observed thus:

“11. There is no dispute that under Rule 28 of the Maharashtra Country Liquor Rules 1973, it relates to transfer of licence. It is the Collector who has to deal

¹ (2002) 5 Mah LJ 528

with the question relating to grant of permit or transfer of licence from one name to another or admit or delete the name of any partner after the licence is granted. However, any issue regarding the dissolution of the partnership or basic constitution of the partnership in whose name the licence is issued by the Collector, it is for the Civil Court alone to decide that issue. As to the dissolution of the partnership so also formation of the partnership, it is needless to say that in such cases, the issue involved is of civil nature relating to the rights of the parties involved in the partnership firm. Therefore, it cannot be said that the jurisdiction of the Civil Court is excluded because under Rule 28 the Collector has to deal with the issue regarding granting permission or licence or deleting the name of the partner after the licence is granted.”

35. As the pleadings in plaint would unveil, it is the case of the plaintiff that after filing the application before the collector for transferring the remaining 40% interest of defendant No. 3 in the licence, in favour of plaintiff and to delete his name from the licence, the defendant No. 3 retired and was estopped from going back and asserting that he had dissolved the partnership and that the name of plaintiff should be deleted from the licence. In the aforesaid backdrop a declaration has been sought by the plaintiff that the plaintiff is the sole licensee and further to restrain the defendant No.3 and his relatives, servants etc. from interfering and obstructing in the said licence and business.

36. It is clear from the scheme of the Act of 1949 that the Collector has power to permit the transfer of licence from one name to another or admit or delete name of any partner to whom licence is granted. However, under the Act of 1949 and the Rules 1973, no adequate or sufficient remedy is provided for the determination of the right or liability and to do what the civil courts would normally do in a suit. Thus, the approach from the legal

standpoint leads to the conclusion that the Collector cannot decide a question whether any partner is retired or not or to determine rights or liabilities of the parties flowing through any agreement or contract, in case of any dispute emerges in that regard between parties.

37. Therefore, taking over all view of the matter and considering the scheme of the Act 1949 and judgments referred above, I have no hesitation to hold that to the extent of rights and liabilities of the plaintiff emanated from the Partnership Deed, the civil suit is maintainable and the bar under Section 146 of the Act of 1949 would not be attracted. Hence, the learned lower appellate Court erred in holding that the Civil Court has no jurisdiction to entertain the suit and grant relief sought by the plaintiff.

38. As regards the contention raised by the plaintiff that once the learned lower Appellate Court had reached to a conclusion that the civil suit was not maintainable, the learned lower Appellate Court ought not to have given findings on merit. I find substance in the said submission of the learned counsel for the plaintiff. The rules of pleadings postulates, that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7 Rule 11 of the Code. Consequently, the only course remains is to return the plaint to present the same before the appropriate forum or permit the plaintiff to withdraw the suit with liberty to file appropriate proceedings before the appropriate forum. Thus, I find that the learned lower Appellate Court erred in giving findings on merits of the matter.

39. The Hon'ble the Supreme Court of India, in the case of *S.P. Misra and others Vs. Mohd. Laiquddin Khan and another*¹ has categorically held that where there are two partners, the partnership dissolves on the death of a partner and once the partnership comes to an end, by virtue of death of one of the partners, there will not be any partnership existing. In this case, the defendant No.3 died during the pendency of the suit and there is no doubt that the partnership is dissolved due to death of defendant No.3 and no partnership is existing as on this day.

40. Nevertheless, it is the ordinary rule of civil law that the right of the parties stands crystallized on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis.

41. In the circumstances the important points which would, therefore, be required to be adjudicated in this case are that, whether the defendant No.3 got retired from partnership as claimed by the plaintiff or whether the partnership stood dissolved as claimed by the defendant No. 3, in light of the provisions of the Act of 1932, on the date of institution of suit by the plaintiff.

42. On adjudication and determination of aforementioned points it is also necessary to look into the after-effects on the rights and liabilities of the parties, connecting to the licence. Hence, having held that the civil suit is maintainable, this matter needs to be remitted back to the learned lower appellate Court for fresh decision. Resultantly, I do not wish go into the other contentions raised on merit by the respective parties.

¹ (2019) 10 SCC 329

43. The judgment cited by the learned counsel for the respondents, in the case of *Khodaram Sheriar Irani and Others Vs. Damodar Shripal Bagal and another (Supra)*, the same is distinguishable on facts. In the said case the licence was issued in the name of defendant No.1 for carrying on business of selling country liquor and the plaintiffs entered into an agreement with defendant Nos.1 and 2 and thereby defendant No.1 agreed to give benefits of the liquor licence to the plaintiff. From the facts of the said case, it is clear that the name of the plaintiff was not entered into the licence, and throughout the licence stood in the name of defendant No.1 only

44. Similarly in the judgment in the case of *Uttam..Vs. State of Maharashtra (supra)*, the fact was that while granting permission by the Government to induct a partner, the condition was put to the effect that the original licensee would remain beneficiary and that incoming partner would not have any claim to licence in the event of death or retirement of original licensee. The said judgment is also distinguishable on facts and therefore, is of no assistance to the defendant No.3.

45. In view of the aforesaid discussions, I pass the following order:

- i) The appeal is partly allowed.
- ii) The impugned judgment and decree in Regular Civil Appeal No.8 of 2015, dated 05/10/2016 passed by the District Judge-I, Omerga, District: Osmanabad, is hereby quashed and set aside.
- iii) The matter is remitted back to the District Judge-1, Omerga, with direction to restore the Regular Civil Appeal No.8 of 2015 to its original number and thereupon, decide the appeal

afresh, in view of the observations made herein above, after hearing both the parties within a period of six months from the date of receipt of certified copy.

- iv) No order as to costs.
- v) Civil Applications, if any, shall stand **disposed of**.

JUDGE

46. At this stage, Ms Talekar, learned counsel for the appellant states that in view of the interim order granted by this Court on 23/12/2016 the appellant is running the liquor shop. She prays for continuation of said interim order till decision in the appeal.

47. Shri Madhav Ghode, learned counsel holding for Shri P.K.Joshi, learned counsel appearing for the respondent Nos.3-A to 3-D strongly opposed the said request.

48. In view of the fact that the interim order is in operation for such a long period, if the same is continued till the decision of appeal, no prejudice will be caused to the respondent Nos. 3-A to 3-D. In that view of the matter, the interim relief granted vide order dated 23/12/2016 shall continue till final decision of Regular Civil Appeal No. 08 of 2015.

JUDGE