

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

**WRIT PETITION NO. 432 OF 2015
ALONGWITH
INTERIM APPLICATION NO. 348 OF 2020**

Dattatraya Suryappa Dhangar @ Deshinge & Anr. ... Petitioners
Vs.

Ramesh Baburao Swami, through Power of
Attorney, Baburao Appaya Swami ... Respondent

.....

Mr. Prashant P. Kulkarni for the Petitioners.

Mr. Abhijit Mahadevrao Adagule for the Respondent.

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CORAM: MADHAV J. JAMDAR, J.

DATE : 9th MARCH, 2021.

P. C:-

1. Heard Mr. Prashant Kulkarni learned Counsel for the Petitioners and Mr. Abhijit Adagule, learned Counsel for the Respondent.

2. The Petitioners are original Defendant Nos. 2 and 3 in Regular Civil Suit No. 129 of 2001. The said suit was decreed against the Defendants by ex-parte Judgment and Decree dated 22nd October, 2002. The Petitioners filed Misc. Civil Application No. 6 of 2009 under Order 9 Rule 13 of the Code of Civil Procedure, 1908 seeking setting aside ex-parte decree. The said Misc. Civil Application No. 6 of 2009 was dismissed by Judgment and Order dated 8th July, 2013. The Appeal Challenging the same bearing Misc. Civil Appeal No. 46 of 2013 was dismissed by order dated 5th March, 2014. The

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Petitioners have impugned both these orders in the present Writ Petition.

3. Advocate Prashant Kulkarni pointed out various aspects of the matter which are not taken into consideration by both the Courts below while passing the impugned orders dated 8th July, 2013 and 5th March, 2014. Advocate Prashant Kulkarni also pointed out order passed by this Court in Writ Petition No. 8377 of 2007 and more particularly observations made in paragraph No. 6 and submitted that the same are also not considered by the Courts below.

4. On the other hand, Advocate Abhijit Adagule pointed out the cross examination of Appellant No.2 in paragraph No.14 on which reliance is placed by the Learned District Judge. Mr. Prashant Kulkarni, however submitted that the said cross examination is misconstrued and it is very apparent that as there are several litigation between the parties, the said observations in the cross examination do not reflect true position and the same is required to be read in consonance with other part of evidence of the Appellant No.2.

5. Mr. Abhijit Adagule also submitted that the observations in the order passed by this Court in Writ Petition No. 8377 of 2007 are prima facie observations made while dealing with delay condonation application and the same are not relevant for deciding the Miscellaneous Civil Application.

6. After arguing the matter for some time, both the Advocates submit that as per their instructions both the Petitioners and the

Respondents are agreeable to set aside the impugned orders and for remanding the matter to the Court of Learned Civil Judge, Junior Division, Jaysingpur at Jaysingpur. Both Advocates state that no reasons are required to be recorded for setting aside the said orders.

7. In view of above, following order is passed by consent of the parties:-

ORDER

- (i) The order dated 8th July, 2013 passed by the Learned Joint Civil Judge, Junior Division, Jaysingpur at Jaysingpur in Misc. Civil Application No. 6 of 2009 as well as the order dated 5th March, 2014 passed by the Learned District Judge-1, Jaysingpur at Jaysingpur in Miscellaneous Civil Appeal No. 6 of 2009 are quashed and set aside.
- (ii) Miscellaneous Civil Application No. 6 of 2009 is restored to the file of Learned Civil Judge, Junior Division, Jaysingpur at Jaysingpur.
- (iii) Parties to appear before the Learned Civil Judge, Junior Division, Jaysingpur at Jaysingpur on 5th April, 2021.
- (iv) The Learned Civil Judge, Junior Division, Jaysingpur at Jaysingpur is requested to dispose of the Miscellaneous Civil Application No. 6 of 2009 within a period of 6 months from 5th April, 2021.
- (v) Both the parties are at liberty to adduce additional evidence.

- (vi) It is needless to clarify that all the contentions of the parties are kept open and this Court has not opined on any of the issues raised by the parties.
- (vii) The Writ Petition is disposed of in the above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)