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

**983 APPEAL FROM ORDER NO.11 OF 2022
WITH CA/5342/2022 IN AO/11/2022**

**SANJAY BHIMASHANKAR BOGLE
VERSUS
ARJUN KASHINATH BOGLE AND ORS**

Mr. Prakash S. Paranjape, Advocate for the
appellant
Mr. Datta A. Madake, Advocate for respondent
Nos. 1 to 4

CORAM : S. G. DIGE, J.

DATE : 02nd August, 2022

P. C.

1. The challenge in this appeal is the judgment and order dated 26-10-2021 passed by the District Judge-2, Parbhani allowing the RCA No.99/2017 and partly allowing the RCA No. 103/2017, thus setting aside the judgment and decree of the trial court and remanding back the matter for fresh trial to the learned Joint Civil Judge Senior Division. The present appeal is preferred by the appellant-original

plaintiff.

2. It is the contention of the learned counsel for the appellant that the learned District Judge-2 has erroneously remanded the matter back to the trial court for fresh adjudication when the plaintiff had already led his evidence and the defendants despite ample opportunity given by the trial court had not cross-examined the plaintiff, neither have led evidence to that effect. The impugned order is result of non-application of mind to the facts involved in this case. The learned District Judge-2 has ignored the material evidence which has come on record. The learned counsel further submits that the learned District Judge-2 has failed to appreciate the fact that the defendants had preferred RCS No. 71/2009 before the learned Civil Judge Junior Division for relief of declaration about the ownership and

perpetual mandatory injunction. The parties in the suit had jointly agreed for measurement of the property and it is also matter of record that as per the report of Surveyor the defendants had encroached on the area of plaintiff to the extent of 65-R. The suit was decreed in favour of plaintiff. Defendants (respondents herein) had filed civil suit NO. 71/2009 but it was not prosecute by them. Hence it is dismissed. The learned counsel requested to allow the appeal.

3. The learned counsel for the respondents submits that proper opportunity was not given to them to put their side. The order passed by the learned District Judge-2 is legal and valid.

4. Perused the order passed by the learned District Judge-2.

5. In the order, the learned District Judge has observed that the defendants-respondents herein are entitled to get an opportunity to lead the evidence and cross-examine the witness of the plaintiff. Hence, the matter was remanded back and imposed cost of Rs.50,000/- on the respondents.

6. In my view, there is dispute about encroachment on the property. The respondents are contesting defendants. Hence, opportunity should be given to them to put their side. They did not put their side while suit was going on. Hence, Rs.50,000/- cost imposed on them. I do not see any perversity in the order passed by the learned District Judge-2, Parbhani. Hence, I pass the following order:-

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ORDER

a] The Appeal From Order is dismissed.

b] The respondents shall pay Rs.20,000/- cost in addition to cost of Rs.50,000/- to the appellant on or before 01-09-2022.

c] The Appeal From Order is disposed of.

d] Pending civil application, if any, stand disposed of.

[S. G. DIGE, J.]

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