

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 13 OF 2022

PRAKASH VISHNU KHADKE SINCE DECEASED THR HIS
HEIRS AND LRS JYOTI PRAKASH KHADKE AND OTHERS
VERSUS
SARASWATIBAI JANARDHAN RANE AND OTHERS

...
Advocate for Appellants : Mr. L.V. Sangit h/f.
Ms. M.L. Sangit
Advocate for Respondent Nos.1 to 6 : Mr. S.S. Patil
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CORAM : S.G. DIGE, J.
DATE : 5th August, 2022

ORDER :

1. Challenge in this appeal is order dated 3rd February, 2022 passed by District Judge-1 below Exh.39 in Regular Civil Appeal No.73 of 2013. The present appellants - original plaintiffs have preferred present appeal.

2. It is contention of learned Counsel for appellants that, the learned District Judge has allowed the application below Exh.70 and remanded the suit for fresh hearing on the point of counter claim below Exh.77. The Special Civil Suit was filed by the appellants bearing No.

130 of 2000 in the Court of Civil Judge, Senior Division for specific performance of possession and injunction. After considering the evidence, the Trial Court has decreed the said civil suit in favour of the appellants in the year 2011. The appeal was preferred by the respondents before the District Judge in the year 2013. The impugned application (Exh.77) was filed for first time in the year 2018 requesting the remand of the matter and on it, the impugned order is passed.

3. Learned Counsel for appellants further submits that, sufficient opportunity was given to the respondents to put their side before the Trial Court in spite of that, respondents failed to do it. Learned District Judge ought not to have remanded the matter on the issue of taking further evidence as he himself has powers to record evidence on additional issue. In spite of doing it, matter is remanded back. The matter is pending since 20 years and appellants are awaiting for justice since long. Plea raised by the respondents through application (Exh.70) is not maintainable as respondents had not deposited the Court

fees for counter claim nor it was within specific time so, said application was not in limitation hence, requested to allow the appeal.

4. Learned Counsel for respondents submits that, respondent Nos.3 to 5 were minor and not aware about counter claim. After attaining the majority they filed separate written statement in suit pending before the Trial Court and filed written statement claiming the suit property is joint family property and filed counter claim.

5. The District Judge has passed the order after considering all the aspects hence, order passed by the District Judge is legal and valid.

6. I have heard all the learned Counsel. Perused order passed by the learned District Judge, Jalgaon.

7. By impugned order the learned District Judge has remanded the matter for deciding the issue arising out of Exh.77. It is contention of respondent Nos.3 to 5 that, when suit was filed they were minors. They were not aware about counter claim. After attaining the majority,

they have filed written statement and counter claim. It is contention of appellants that, it is not within limitation and not maintainable. In my view, if, the Trial Court is directed to frame the additional issue of maintainability and limitation and decide it on its own merit, would suffice the purpose of both parties. Hence, I pass the following order :-

ORDER

- (a) The appeal is partly allowed.
- (b) The Trial Court shall frame the issue of maintainability and limitation and decide it on its own merit. Both the parties, if desires, give evidence in respect of framed the issue of maintainability and limitation. The Trial Court shall decide the matter on its own merits.
- (c) The Trial Court is requested to decide the matter as early as possible preferably within six (06) months, after receipt of the order.
- (d) Pending Civil Applications are disposed of.

[S.G. DIGE, J.]