

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 275 OF 2016

Babasaheb S/o Genuji Dhas,
Age 78 years, Occ. Agriculture
R/o Sapkal Galli, Paithan
A.P. Janhavi Residency,
Yeshwantnagar, Paithan
Dist. Aurangabad

.. Appellant
(Orig. Plaintiff)

Versus

- 1] The State of Maharashtra
Through District Collector,
Aurangabad
- 2] The Tahasildar Paithan
R/o Tahasil Office, Paithan
- 3] The Chief Officer,
Municipal Council, Paithan
- 4] The Deputy Director of Resettlement
(Lands) Aurangabad
R/o The Office of the Deputy Director
of Resettlement (Lands) Aurangabad
- 5] Baliram S/o Shankar Deshmukh
Age 75 years, Occu. Pensioner,
R/o Narala Paithan, Dist. Aurangabad

.. Respondents
(Orig. Defts.)

...
Mr. A.B. Kadethankar, Advocate for the appellant
Mr. B.V. Virdhe, AGP for respondents no. 1, 2 and 4
Mr. Sagar S. Ghate h/f. Mr. Swapnil S. Patunkar for J.P. Legal Associates for
respondent no. 3
...

CORAM : MANGESH S. PATIL, J.

DATE : 21 FEBRUARY 2022

ORAL ORDER :

Though this is an appeal under section 100 of the Code of Civil Procedure, the only substantive question of law that arises for

determination at this juncture is as to whether the lower appellate court was justified in deciding the appeal without taking any decision on the application that was filed by the present appellant who was also the appellant before the lower appellate court under Order XLI Rule 27 of the Code of Civil Procedure right in the teeth of the order and the direction passed by this Court in writ petition no. 2688 of 2011 dated 06-01-2012.

2. I have heard the learned Advocate Mr. Kadethankar for the appellant who is the original plaintiff, learned counsel for the respondent no. 3 - Municipal Council and Mr. Virdhe, the learned AGP.

3. The respondent no. 5 who is the contesting respondent has been duly served and represented by his learned Advocate Mr. Jadhav but he is not present.

4. The appellant is the original plaintiff who filed the suit for declaration that the allotment of a plot to the respondent no. 5 by the State Government vide the order of the District Collector dated 10-02-1989 is null and void as he was not a person who was entitled to allotment of the suit plot under the Maharashtra Project Affected Persons Rehabilitation Act, 1986 and the scheme of the State Government under that Act.

5. The trial court having refused to grant any declaration and dismissed the suit, the appellant preferred the appeal before the district

court. By the judgment and decree under challenge in this second appeal, the appeal has been dismissed.

6. As can be appreciated from the point formulated herein-above, during pendency of the appeal before the District Court, the appellant submitted an application (Exhibit - 13) purportedly under Order XLI Rule 27 of the Code of Civil Procedure for production of documents at the appellate stage. Since that application was rejected by the District Court, he preferred writ petition no. 2688 of 2011. By the order dated 06-01-2012, observing that since it was an application under Order XLI Rule 27 of the Code of Civil Procedure, it ought to have been considered and decided along with the appeal, this Court had passed the following directions in paragraph no. 5:

5. In that view of the matter, the impugned order is set aside. The application under O. 41, R. 27 of the Code is restored to its original file. The lower appellate Court is directed to hear and decide the said application along with the appeal, as expeditiously as possible, and if possible, on day to day basis, within a period of six months from today.

It is made clear that this Court has not expressed any opinion on the merits of the matter. With these directions, writ petition is disposed of.

7. For the reasons unknown, in spite of the specific directions by this Court to decide that application under Order XLI Rule 27 of the Code of Civil Procedure along with the appeal, the judgment and order under challenge does not demonstrate about the lower appellate court

having followed that direction and to have decided the application under Order XLI Rule 27 of the Code of Civil Procedure.

8. Needless to state that it would neither be appropriate for this Court to examine the aspect not only in respect of the merits of the application which was filed by the appellant under Order XLI Rule 27 of the Code of Civil Procedure nor would it be appropriate to consider the worth of the document sought to be produced and its bearing on the merits of the case. That is a matter which now the lower appellate court will have to ponder upon and decide.

9. In view of such peculiar state-of-affairs, the Second Appeal deserves to be allowed to the extent of the substantive question formulated herein-above which is accordingly answered in the negative and to remand the matter to the lower appellate court for decision afresh by passing an appropriate order on the application filed by the appellant under Order XLI Rule 27 of the Code of Civil Procedure.

10. The Second Appeal is allowed.

11. The impugned judgment and order passed by the lower appellate court is quashed and set aside. The appeal is remanded to it for deciding it afresh along with the application of the appellant filed under Order XLI Rule 27 of the Code of Civil Procedure on merits, by extending opportunity to both the sides to argue. The appellate court shall decide the appeal as expeditiously as possible.

12. The R & P be sent back to the lower appellate court immediately.

13. The parties shall appear before the lower appellate court on 21-03-2022 and there shall be no need for it to issue any notice to the parties. Costs in cause.

[MANGESH S. PATIL]
JUDGE

arp/