

Diksha Rane

Digitally
signed by
DIKSHA
DINESH
RANE
Date:
2022.09.06
19:08:00
+0530

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

**APPEAL FROM ORDER NO. 148 OF 2022
WITH
INTERIM APPLICATION NO. 979 OF 2022**

Kalabai Eknath Takale (deceased)
thr. Lrs Hanmant Sopan Nalawade ..Appellant
vs.
Subhash Bajrang Takale @ Nalawade
& ors. ..Respondents

**WITH
APPEAL FROM ORDER NO. 859 OF 2022
WITH
INTERIM APPLICATION NO. 17775 OF 2022**

Subhash Bajrang Takale @ Nalawade
& ors. ..Appellants
vs.
Kalabai Eknath Takale (deceased)
thr. Lrs Hanmant Sopan Nalawade ..Respondent

Mr. P. B. Gujar for appellant/applicant in AO/148/2022 & IA/
979/2022 and for respondent in AO/859/2022 and
IA/17775/2022.

Mr. Manmath Athalye for appellant/applicant in
AO/859/2022 and IA/17775/2022 and for respondent in
AO/148/2022 & IA/979/2022.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 6, 2022.

P.C. :

1. It is common ground that these appeals can be disposed of by a common order as the same order passed by the Appellate court is under challenge by the original plaintiffs as well as the defendants.

2. The appellant in A. O. No. 148/2022 – original plaintiffs contends that the Appellate Court found that the trial Court ought to have framed an issue of tenancy. The Appellate Court also found that some additional issues needed to be framed by the trial Court as reflected in the impugned order. It is the contention of learned counsel for the original plaintiffs that the Appellate Court instead of remitting the matter back to the trial Court for deciding the issues framed by the Appellate Court, proceeded to set aside the judgment and decree of the trial Court, which, in his submission was uncalled for.

3. Learned counsel for the appellant- original defendants in A. O. No. 859 of 2022 assailing the decision of the Appellate court contended that there was no requirement of framing the issue as regards the tenancy as the matter was already decided by the Tenancy Court and the materials therein in the form of evidence and other pleadings was already on record. According to him, this aspect was not properly appreciated by the Appellate Court. Without any further deliberations on the rival contentions raised, considering that the original plaintiffs as well as the

defendants are aggrieved by the order of the Appellate Court and also having regard to the submissions made by learned counsel, I find that the Appellate court needs to deliberate on the submissions which the Appellate Court did not have an opportunity to deal with.

4. The impugned order passed by the Appellate Court is therefore quashed and set aside by consent of the parties.

5. The Appeals are allowed.

6. Regular Civil Appeal No. 143 of 2013 is remitted back to the Principal District Judge, Satara, for a fresh decision on its own merits and in accordance with law.

7. All contentions are kept open.

8. Learned Principal District Judge not to be influenced by the observations made by me in this order.

9. No costs.

10. Interim Applications are disposed of.

(M.S.KARNIK, J.)