

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

**SECOND APPEAL NO.382 OF 2019
WITH
CIVIL APPLICATION NO.859 OF 2019**

Sau. Vanmala Sureshkumar Kasliwal & Ors. ...Appellants
Versus
Mahavir Bansilal Kasliwal
through Guardian
Smt. Niramal Mahavir Kasliwal & Ors. ...Respondents

**WITH
SECOND APPEAL NO.442 OF 2019**

Nirmala Mahavir Kasliwal & Ors. ...Appellants
Versus
Vanmala Sureshkumar Kasliwal & Ors. ...Respondents

Mr. P. J. Thorat a/w. Ms. Aditi S. Naikare, for the Appellants in Second Appeal No.382 of 2019 & Applicants in Civil Application No.859 of 2019 and Respondent Nos. 1 to 4 in Second Appeal No.442 of 2019.

Mr. Girish Godbole i/b. Mr. Anish Khandekar, for Respondent Nos. 1 to 4 in Second Appeal No.382 of 2019 and Appellants in Second Appeal No.442 of 2019.

Mr. Mahendra N. Sandhyanshiv, for Respondent Nos. 9 & 10 in Second Appeal No.382 of 2019 and Respondent Nos. 10 & 11 in Second Appeal No.442 of 2019.

Mr. Himanshu Takke, for Respondent No. 11 in Second Appeal No.382 of 2019 & Respondent No.12 in Second Appeal No.442 of 2019.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 20th DECEMBER 2022**

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P.C. :

1. Heard Mr. Thorat along with Ms. Aditi Naikare, learned counsel for the Appellants, Mr. Girish Godbole, learned counsel appearing for Respondent Nos.1 to 4, Mr. Mahendra N. Sandhyanshiv, learned counsel appearing for Respondent Nos. 9 and 10 and Mr. Himanshu Takke, learned counsel appearing for Respondent No.11 in Second Appeal No.382 of 2019. All these counsel have also appeared in companion Second Appeal No.442 of 2019 for respective parties.

2. Mr. Thorat, learned counsel appearing for the Appellants submitted that *inter alia* following substantial question of law is involved in this Second Appeal:-

“Whether the impugned Judgment and Decree passed by the learned First Appellate Court is contrary to the principles of natural justice and without considering the relevant evidence?”

3. He submitted that the Appellants filed application under Order XLI Rule 27 seeking to produce certain additional evidence bearing Exhibit 84 in Civil Appeal No.47 of 2016 and by order dated 3rd October 2018 passed by the learned First Appellate Court, it has been directed that the said application would be heard along with the main Appeal. However, the main

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Appeal has been decided by the impugned Judgment and Decree without deciding the said application and without considering the said documents sought to be produced along with the said application.

4. Mr. Girish Godbole, learned counsel appearing for Respondent Nos. 1 to 4 submitted that the documents which are sought to be produced along with said application bearing Exhibit 84 in Civil Appeal No.47 of 2016 are not very relevant. However, the factual position on record clearly show that on Exhibit 84 application, a specific order has been passed by the learned First Appellate Court that the said application would be decided along with the main Appeal. It is also admitted position that the main Appeal was decided without considering the said application. Therefore, there is violation of principles of natural justice as well as Judgment and Decree passed by the learned First Appellate Court suffers from grave illegality and irregularity.

5. Faced with this situation, all the parties appearing before this Court agreed to remand back the matter to the learned First Appellate Court.

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6. I have considered the submissions of all the parties. The factual position on record clearly shows that the learned First Appellate Court proceeded to decide Regular Civil Appeal No.47 of 2016 without deciding or without considering the application bearing Exhibit 84 filed under Order XLI Rule 27 of CPC seeking production of additional evidence. Therefore, the impugned Judgment and Decree of the learned First Appellate Court is illegal and perverse.

7. For the above reasons, the Second Appeal is allowed by passing the following order:-

ORDER

i. The Judgment and Decree dated 29th October 2018 passed by the learned District Judge-3, Malegaon at Malegaon, Dist. Nashik in Regular Civil Appeal No.47 of 2016 is quashed and set aside and the said Regular Civil Appeal No.47 of 2016 is restored to the file of learned District Judge, Malegaon at Malegaon, Dist. Nashik.

ii. All the parties to appear before the learned First Appellate Court on 23rd January 2023. The learned

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First Appellate Court to decide the schedule of hearing of Regular Civil Appeal No.47 of 2016 and dispose of the said Regular Civil Appeal on or before 31st July 2023.

iii. The learned First Appellate Court to decide the Appeal along with Exhibit 84 application filed in Regular Civil Appeal No.47 of 2016.

iv. It is clarified that this Court has not considered the merits of the matter and only on the above limited substantial question of law has remanded the matter to the learned First Appellate Court. It is thus clarified that all the contention raised by all the parties are expressly kept open for being agitated before the learned First Appellate Court.

v. As I have set aside the impugned Judgment and Decree in Second Appeal No.382 of 2019, Second Appeal No.442 of 2019, impugning the same Judgment and Decree of the learned First Appellate Court is also disposed of on above terms.

8. Both the Second Appeals are disposed of in above terms

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with no order as to costs.

9. In view of the disposal of both the Second Appeals, nothing survives in the Civil Applications and same are disposed of accordingly.

[MADHAV J. JAMDAR, J.]

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