

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.978 OF 2022**

Mariyan Philip Vaz (Deceased) Through
Lrs. Margaret Mariyan Vaz and ors.

....Appellants

Versus

Philip Anthony D'Silva and ors.

...Respondents

Dr. Uday P. Warunjikar, Advocate for the Appellants
Mr. Girish Godbole i/b. Mr. Kaustubh Thipsay, Advocate for the
Respondent Nos.1 to 5.

CORAM : S. G. DIGE, J.

DATE : 2nd DECEMBER, 2022.

P.C. :

1. Heard Dr. Warunjikar, learned counsel for the appellants
and Mr. Godbole, learned counsel for the respondents.

2. Learned counsel for the appellants submits that the
learned appellate court has remanded the suit without any
reasonable ground. Respondent Nos.1 to 5 were served thrice by
the appellants/original plaintiffs. In spite of that, respondent Nos.1 to
5 failed to appear before the learned trial court. Accordingly, the suit
was decreed. It was challenged by respondent Nos.1 to 5 before the
appellate court. The appellate court has observed that the learned

This order is corrected pursuant to the order dated 22nd December, 2022.

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trial court has not considered that the service made on respondent Nos.1 to 5 is proper service and to give an opportunity to respondent Nos.1 to 5, the appellate court has remanded the matter, which is illegal. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondent Nos.1 to 5 that no proper service was made on respondent Nos.1 to 5. Respondent Nos.1 to 5 are in possession of the suit property. They are claiming to be the owners of the said property. If opportunity is not given to them to put their case, it would cause great injustice to them. The appellate court has observed that no proper service was made on respondent Nos.1 to 5 and without discussing the issue of ownership, in one paragraph, the trial court has concluded that the appellants are entitled for the relief claimed in the suit, accordingly, the suit was decreed. The order passed by the appellate court is legal and valid.

4. I have heard both learned counsel, perused the impugned order passed by the District Court of Vasai in Regular Civil Appeal No.3 of 2018. The learned appellate court has observed that the trial court has not considered properly about the service of summons

on respondent Nos.1 to 5. Learned appellate court further observed that it was fully known to the plaintiffs(appellants) that the defendants are residing on a particular address, the proper option before the plaintiffs was to serve the summons in the manner prescribed under Order V Rule 17 of the Code of Civil Procedure, 1908, the trial court has committed a fundamental error in approving it as proper and good service effected directly under Order V Rule 20 of the Code of Civil Procedure, 1908. No doubt, it is a service but not in a proper manner. The learned appellate court further observed that the trial court has not given proper reasoning by considering all the facts while decreeing the suit.

5. In my view, admittedly, the appellants/plaintiffs are claiming possession of the suit property, which is in possession of respondent Nos.1 to 5. As per the principle of natural justice, it is necessary to give fair opportunity to respondent Nos. 1 to 5 to put their case. It is the contention of learned counsel for the appellants that the original suit was filed in the year 2009 and it was decreed in the year 2016, so since several years the plaintiffs are waiting for justice. Be that as it may, the suit is decreed against respondent Nos. 1 to 5 ex-parte. The trial court has decreed the suit but no

proper reasons are given while decreeing the suit. Respondent Nos.1 to 5 are in possession of the suit property, hence it is necessary to give them opportunity to put their side. If heavy cost is imposed on respondent Nos. 1 to 5 and direction is given to the trial court to expedite the matter, would meet the ends of justice.

6. In view of the above, I pass the following order :

1. The appeal from order is disposed of.
2. The trial court is requested to decide the civil suit No.331 of 2009 as early as possible preferably within four months from the receipt of this order.
3. The Respondent Nos.1 to 5 shall pay cost of Rs.10,000/- each to the appellants within two weeks from the receipt of this order.
4. Learned counsel for respondent Nos. 1 to 5 waives service of summons on behalf of respondent Nos.1 to 5. Respondent Nos. 1 to 5 shall appear before the trial court and shall file

their written statement within two weeks after their appearance before the trial court.

5. Both the parties are directed to appear before the learned trial court on 22nd December, 2022 at 11.00 a.m..

7. Learned counsel for the appellants submits that an amount of Rs.50,000/- towards costs be paid to appellant viz. Slanny Joseph Vaz on behalf of all the appellants. The statement of learned counsel for the appellants is accepted.

8. Pending applications, if any, will not survive for consideration and the same are also disposed of.

(S. G. DIGE, J.)