

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

APPEAL AGAINST ORDER NO.11 OF 2010

Chandrashekhar Champalalji Ughade
(deceased) through LRs

1. Vinay s/o Chandrashekhar Ughde
Aged about 50 years, Occ: Business,
R/o Dr. Pimparkar Road, Paratwada,
Tahsil – Achalpur, Dist. Amravati.
2. Sau. Anjali W/o Devendra Kirad
(deceased) through LRs
- 2-a. Shri Devendra s/o Rohidasji Kirad,
Aged about 54 years, Occ: Business,
R/o 443, Nanapeth, Pune-2.
- 2-b. Sau. Pooja W/o Ashish Kirad,
Aged about 26 years, Occ: Household,
R/o 336, Nanapeth, Pune-2.
- 2-c. Sau. Smruti W/o Chetan Kirad,
Aged about 22 years, Occ: Housewife,
R/o 94, Lulla Nagar, Midas Touch, Co-
operative Housing Society, Raw House
No.6, Pune-42.
- 2-d. Ku. Vaishnavi D/o Devendra Kirad
Aged about 20 years, Occ: Student
R/o 443, Nanapeth, Pune-2.
3. Sau. Nilima W/o Purushottam Harode,
Aged about 40 years, Occ: Housewife,
R/o Deotale Layout, Ambazari, Nagpur.

... APPELLANTS

---VERSUS---

1. Omprakash s/o Chiranjilal Agrawal
Aged about 60 years, Occ: Business
2. Santoshkumar s/o Chiranjilal Agrawal
(deceased) through LRs
- 2-a. Mrs. Kalpana Santosh Agrawal
Age:54 years, Occ: Housewife.
- 2-b. Ravi Santosh Agrawal
Age: 31 years, Occ: Service
Both R/o Behind Fattchandji Bhansali
Convent, Kandli, Tah: Achalpur, Dist.
Amravati.
- 2-c. Mrs. Tina Gopal Khetan
Age: 35 years, Occu: Housewife
R/o Court Road, State Bank Colony, Tah.
Achalpur, Dist. Amravati.
- 2-d. Mrs. Poonam Mohan Jhanjaria
Age: 38 years, Occ: Housewife,
R/o Akhada Ward behind Sai Mandir,
Pandharkawada, Dist. Yavatmal.
3. Chandrakala W/o Prabhudasji Kirad
(deceased) through LRs
- 3-a. Surendra Prabhudasji Kirad
Aged about 65 years, Occ: Business,
R/o 443, Kirad Villa, Nana Peth, Pune.
- 3-b. Gajendra Prabhudasji Kirad
Aged about 62 years, Occ: Business,
R/o 443, Kirad Villa, Nana Peth, Pune.
- 3-c. Shailendra Prabhudasji Kirad
Aged about 55 years, Occ: Business,
R/o 443, Kirad Villa, Nana Peth, Pune.

- 3-d. Smt. Karuna Sudhakar Tehare
Aged about 67 years, Occ: Housewife,
r/o Ambanagari, 10/32, Dhanori Road,
Vishrantwadi, Pune-414015.
- 3-e. Sau. Suvarna Hemaraj Narware
Aged about 62 years, Occ: Housewife,
R/o At post Chicholi Dhana Tahsil
Bhainsdehi, Dist. Betul, MP
4. Indumati W/o Kamalnarayan Harode
(deceased) through LRs
- 4-a. Sanjay Kamalnarayan Harode
Aged : 56 years, Occ: Service,
R/o Upasrao Marg, Kiradpura, Sadar,
Nagpur.
- 4-b. Aparna Rajendra Verma
Aged 56 years, Occ: Housewife,
R/o Cycle Society, Near YMCA 22 Flat No.
Rastapeth, Pune (M.S.)
- 4-c. Darshana Todasingh Solanki
Aged 45 years, Occ: Housewife,
R/o Tagare Ward, Housing Board Colony,
Near Sahani Mall, Ganj, Betul (M.P.)
- 4-d. Ashutosh Kamalnarayan Harode
Aged 40 years, Occ: Nil,
R/o Pimpalkar Marg, Sadar Bazar,
Paratwada (M.S.).

...RESPONDENTS

Shri P.R. Agrawal, Advocate for the appellants.
Shri A.S. Ambatkar, Advocate for respondent nos.3(a) to 3(e).

CORAM : AMIT BORKAR, J.
DATED : JULY 25, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by

consent of the parties.

2. The following substantial question of law arises for consideration in this appeal:

Whether the Appellate Court was justified in interfering with the final decree in view of the fact that the material necessary for the purpose of adjudication of appeal was already on record of the Appellate Court?

3. The facts giving rise to the present appeal are as under:

(a) The predecessor in title of the appellant had filed Special Civil Suit No.12 of 1989 against the co-sharer seeking partition and separate possession of suit property. The suit was filed on 14.04.1989. During the pendency of the suit, i.e. on 16.11.1991, the original defendant nos.1 to 3 executed two sale deeds in favour of defendants nos.4 and 5. On 21.10.1999, Special Civil Suit No.12 of 1989 was decreed by the trial Court granting 5/12th share to the plaintiff in the suit property. The said decree attained finality.

(b) The original plaintiff filed Special Darkhast No.21 of 1999, which was disposed on an objection raised by the defendant nos.4 and 5 to the suit. In final decree proceedings, the decree-holder filed an application to read the Court Commissioner's report in the execution petition to pass final decree proceedings. The application was rejected; therefore decree-holder filed Writ

Petition No.1055 of 2008, wherein this Court directed the appointment of Court Commissioner and granted judgment-debtor right to object to the report of the Court Commissioner. Thereafter, two Court Commissioners were appointed; Advocate and Civil Engineer. Defendant nos.4 and 5 objected to both the reports. The application for the final decree was allowed on 22.04.2009, which was challenged by way of two appeals; one filed by the original defendant nos.2 and 3, and the second was filed by the original defendant nos.4 and 5. By the impugned judgment, both appeals were allowed, and the matters were remanded to the trial Court. Both appeals are the subject matter of the present appeal.

4. During the pendency of the present appeal, the original appeal challenging the judgment and order in an appeal filed by the defendant nos.2 and 3 was withdrawn on the ground of settlement between the parties.

5. On perusal of the impugned judgment, it appears that necessary material for adjudication of final decree proceedings is already on record. It is not a case where the material of vital importance which would have an ultimate effect was not considered. It is only in such cases where the decree in the challenge can be reversed in appeal, and a retrial is considered necessary. It is settled law that an order of remand is not to be passed in a routine manner because an unnecessary order of

remand prolongs the life of the litigation without serving the cause of justice. In my view, in the facts and circumstances of the present case, the Appellate Court was not justified in remanding the matter to the trial court but should have decided the appeal on merits after considering the evidence adduced before the trial court. In that view, the Appellate Court was not justified in remanding the matter. There was no need to refer the matter back to the trial Court particularly since it is arisen out of final decree proceedings.

6. In the result, I pass the following order:

7. The impugned judgment and order passed by District Judge-1, Achalpur dated 04.09.2009 in Regular Civil Appeal no.55 of 2009 is quashed and set aside.

8. The Appellate Court shall adjudicate the appeal on merits on the basis of material available before it and pass appropriate orders.

9. Considering the fact that the impugned order was passed in the year 2009 and the appeal has been pending before this Court for the last 12 years, the learned Appellate Court is requested to decide the appeal within three months from the appearance of the parties.

10. The parties shall appear before the Appellate Court on 01.08.2022.

11. Records and proceedings are sent forthwith to the Appellate Court.

12. It is clarified that the Appellate Court shall decide the appeal on its own merits without influencing the observations made in the present order.

13. The appeal stands disposed of. Pending civil application (s), if any, stand disposed of.

JUDGE

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