

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

APPEAL AGAINST ORDER NO.2 OF 2019

Tukaram S/o Jagoba Thakre,
 Aged about : 63 years,
 Occu : Service, R/o Plot
 No.43B & 44B, Santoshi Nagar,
 Pipla Road, Nagpur.

..... **APPELLANT**
 (Ori.Deft.on RA)

...V E R S U S...

1. Sumitra W/o Deoraoji Kale,
 Aged about 79 years, Occu:Nil,
 R/o C/o Babarao More,
 Santoshi Nagar, Plot No.23,
 Ward No.20, Nagpur. (Ori. Plaintiff on RA)
 2. Prabhakarrao Khadse (Deleted) (Ori.Deft.No.2 on RA)
 3. Vidarbha Housing Construction
 Workers Association, Nagpur,
 through its Chairman/Secretary,
 Govindprasad Jagmohan Pande,
 Reg. No.NGP/910 of 1976,
 R/o 516, Anandnagar, Azamshah,
 Layout, Nagpur. (Ori.Deft.No.3 on RA)
- Legal Heirs of Defendant no.3
- 3-a) Smt. Kamlabai W/o Govindprasad
 Pande (Dead).
 - 3-b) Rammurthi S/o Govindprasad Pande,
 Aged about 65 years, R/o Anand
 Nagar, Azamshah Layout,
 Nagpur.
 - 3-c) Sanjay S/o Govindprasad Pande,
 Aged about 55 years,
 R/o Anand Nagar, Azamshah
 Layout, Nagpur.
 - 3-d) Shakuntala Mishra,
 Aged about 61 years,
 R/o Santoshi Nagar,
 Pipla Road, Ward No.10,
 Nagpur. ... **RESPONDENTS**

Shri R. L. Khapre, Senior Advocate assisted by Shri Anand P. Thakare, Advocate
for the appellant.

Shri G. N. Khanzode, Advocate for respondent No.1.

CORAM :- AMIT B. BORKAR, J.

DATED :- 15.07.2022

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. The following substantial question of law is involved in the
present appeal:-

“Whether the Lower Appellate Court is justified in
remanding the matter back to the trial Court by framing
additional issues in view of the fact that both parties were
aware of the issues framed by the Appellate Court and had
led necessary evidence in support of their case ?”

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

a] Respondent No.1 had filed Regular Civil Suit No.952/1997
claiming declaration of her ownership over the suit property and for the
injunction not to disturb her possession over the suit property.
According to her, she purchased the suit property in 1990.

b] According to respondent No.1, the original plaintiff, there
was an agreement to sell in 1984. There was an agreement to sell in
relation to suit property, and she has paid the entire amount. According

to her, the sale price has been paid by her. Therefore, she filed suit for specific performance and has counterblast to the suit. Plaintiff has filed a present suit.

c] The trial proceeded with the suit filed by defendant No.1 for specific performance. The trial Court decreed the suit for specific performance and dismissed the suit of a plaintiff seeking declaration and injunction. Against the said decree, the original defendants filed their appeal and the present respondent No.1 also filed appeal challenging the dismissal of her suit. The Appellate Court, by the impugned Judgment and decree, framed the issues and directed the trial court to allow the parties to lead oral evidence in support of their case. The present appellant has challenged the said order.

d] According to the appellant, necessary evidence in support of the issues framed by the Appellate Court has already been on record. Therefore, according to him, both the parties were aware of the issues framed by the Lower Appellate Court, and the evidence on record is sufficient to decide the suit of respondent No.1 on merits.

e] There is no serious dispute between the parties that the evidence in support of issues framed is already on record. If that be so, the Appellate Court does not need to remand the appeal to the trial Court. Instead, the Appellate Court should have decided the suit on merits based on the evidence led by the parties on record. It is not the

case where the parties could not lead evidence due to non-framing of issues. 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.

5. I, therefore, pass the following order :-

I] The impugned Judgment and decree passed in Regular Civil Appeal No.301/2013 dated 08/05/2018 by the District Judge-9, Nagpur is quashed and set aside.

II] The District Judge-9, Nagpur shall decide Regular Civil Appeal No.301/2013 on the basis of evidence led by the parties before the trial Court.

III] It is made clear that the appeal shall be decided on its own merits uninfluenced by the observations made by this

Court in the present order.

IV] Considering the fact that the suit is of the year 1997, learned District Judge-9, Nagpur is requested to decide the appeal within six months from the appearance of the parties.

V] The parties shall appear before the District Judge-9, Nagpur on 01/08/2022 at 11.00 a.m.

6. Appeal Against Order stands disposed of in the above terms.
Pending application(s), if any, stand(s) disposed of.

(AMIT B. BORKAR, J.)

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