

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 SECOND APPEAL NO.480 OF 2022
WITH CA/10749/2022 IN SA/480/2022 WITH CA/3642/2023 IN
SA/480/2022

DESIGNERS CO-OPERATIVE HOUSING SOCIETY THRO.
CHAIRMANSHAIKH ABDUL RAHIM
VERSUS
UDDHAV MURLIDHAR RASNE DECEASED LRS. KUSUM(DELETED) DILIP
UDHAV RASNE DECEASED LRS. SUNANDA AND ORS

Mr.Amol S. Sawant, Advocate for the appellant.
Mr.U.S. Malte, Advocate for the respondents.

CORAM : KISHORE C. SANT, J.
DATED : 09.11.2023

PC :-

01. This matter was heard extensively on 26.10.2023.
It was adjourned only to facilitate both the parties to
file specific affidavit as regards present position in
respect of the suit-land by placing on record
notification, gazette etc. Both the sides were to give
copies of affidavit to each other well in advance.

02. Today learned Advocate for the appellant Mr.
Sawant, along with affidavit has produced on record
copies of development plan and gazette notification. The

respondents have not filed any affidavit and are also not in a position to dispute the affidavit filed by learned Advocate Mr. Sawant. However, both the parties today after hearing for some time accept that the matter requires to be remanded to the District Court for fresh hearing. During the course of hearing, it is seen that the decree is refused to the plaintiff, mainly considering that total land admeasuring 3H 12 R is reserved and same is not available now if suit is to be decreed. As per the present position, the area under reservation shown is only 93 R for municipal hospital and thus there is land available admeasuring 38 R, which is not under reservation. If land admeasuring 38 R is de-reserved, the structure of the plaintiff can be saved, which is standing as on today.

03. The matter is, therefore, remanded to consider this aspect by the learned District Court for drawing final decree. The Trial Court is requested to take into consideration the present position. The Trial Court to

pass appropriate order considering all the factors discussed above and in the light of present position. The parties are free to produce on record documents for the purpose of reservation. Needless to say that both the impugned orders are quashed and set aside.

04. In view of remand of the Second Appeal, pending Civil Applications do not survive and disposed off accordingly.

[KISHORE C. SANT, J.]