

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 48 OF 2018
WITH CA/4502/2020 WITH CA/10205/2018

BASWARAJ KASHINATH CHAUDHARY
VERSUS
MANMATH BABURAO LAMBDADA AND OTHERS

...
Advocate for Appellant : Mr. S.W. Munde
Advocate for Respondent Nos. 1 to 3 : Mr. R.P. Bhumkar

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CORAM : R.M. JOSHI, J.
DATE : 16th March, 2023

PER COURT :

1. This Appeal From Order is filed under Order XLIII Rule 1 of the Civil Procedure Code, against the judgment and decree passed by the learned Principal District Judge, Latur, in Regular Civil Appeal No. 63 of 2016, whereby, the judgment and order dated 01.03.2016 passed by Civil Judge Junior Division, Chakur, in Regular Civil Suit No. 24 of 2012 is set aside and the suit is remanded for fresh trial.
2. Learned counsel for the appellant contends that learned Trial Court by rightly considering the evidence on record had decreed the suit. He took this Court to the findings recorded by the Trial Court, wherein, evidence of finger print expert was accepted to the effect that the registration slip from the Sub Registrar office

does not show thumb impression of plaintiff and other persons. According to him on the basis of these amongst other findings recorded by the Trial Court, the suit is rightly decreed. He contends that learned first appellate Court, however, erroneously reversed the said findings in respect of the finger print expert's evidence and has remitted back the suit for trial afresh after obtaining sample of specimen signature of the plaintiff and for considering the fresh report of the finger print expert. He further, submits that the other findings recorded by the Trial Court such as defendants contention about the document of sale deed bearing no. 1920/1989 being nominal has been rejected by the Trial Court and, therefore, no occasion arose for the first appellate Court to remand the matter back for fresh consideration.

3. Record indicates that Regular Civil Suit No. 24 of 2012 was filed by the plaintiff for declaration of ownership in respect of land admeasuring 1 Hector 21 R out of Gut No. 430/4 situated at Village Chapoli, Taluka Chakur, District Latur. The plaintiff has come out with the specific case that he is the owner of the suit property on the basis of sale deed no. 1920/1989. It is alleged that the defendants have claimed execution of the sale deed in

respect of suit property by sale deed bearing no. 1520 of 2001 in favour of defendant no. 1. Plaintiff has specifically denied the execution of said document and on the basis of these averments suit came to be filed.

4. Perusal of the judgment of the learned Trial Court indicates that trial Court has observed that the plaintiff has failed to substantiate his contention that on the alleged date of execution of sale deed, he was at Aurangabad. However, the trial Court accepted the evidence of finger print expert who has opined that the registration slip from the office of the Sub Registrar does not bear thumb impression of plaintiff and other persons. On the basis of these findings, the trial Court has held that the plaintiff has not executed the sale deed in question. It is pertinent to note that except this reason, no other findings are recorded in order to come to the conclusion about non execution of the sale deed by plaintiff.
5. As against this, learned first appellate Court while re-appreciating the evidence on record has held that the proper procedure for obtaining specimen thumb impression and signature of the plaintiff is not followed. The first appellate

Court was of the view that this is a fit case, wherein, it is necessary to send the sample of specimen signature and thumb impression of plaintiff by following due procedure and that suit can be decided only after considering the opinion of the finger print expert.

6. From the observations made by the learned Trial Court as well as learned first appellate Court, it seems that the disputed document i.e. the registration slip did not bear the stamp or seal of the office of Sub Registrar. Moreover, there is no reason to discard the findings recorded by the learned first appellate Court about non following the proper procedure for obtaining the specimen thumb impression and signature of the plaintiff. Consequently, the first appellate Court was left with no alternative but to remand the case for consideration afresh.
7. In such circumstances, no fault can be found with the findings recorded by the first appellate Court, wherein, it is held that this is a fit case for directing the Trial Court to obtain the sample of specimen signature and thumb impression of the plaintiff by following due procedure. This Court does not find any perversity in findings recorded by the first appellate Court.

8. In view of the above discussion, no case is made out by the appellant to cause any interference in the impugned order passed by the first appellate Court.
9. Learned counsel for the appellant states that the parties herein are senior citizen and that original suit is of the year 2012. He, therefore, seeks direction to the Trial Court to decide the suit expeditiously within a period of six months. Both sides to co-operate with Trial Court for early decision of case.
10. Considering the fact that the suit is more than 10 years old case and also having regard to the age of the litigants, the learned Trial Court is directed to decide the suit as expeditiously as possible and in any case, within a period of six months from date of receipt of the writ. Both sides to co-operate with Trial Court for early decision of case.
11. Learned counsel for both sides undertake to appear before the Trial Court on 30th March 2023.
12. Learned Trial Court is not required to issue fresh notices to the parties.

13. Appeal stands dismissed. Cost in cause.
14. Pending Civil Applications stand disposed of.

[R.M. JOSHI, J.]

SPChauhan