

3. Both the parties, on instructions, consented for final disposal of the appeal at admission stage on the aforesaid point of law.

4. The respondent filed a Special Civil Suit No.464 of 2007 in the Court of Civil Judge Senior Division at Aurangabad for specific performance of an agreement for sale dated 13th October, 1998. It is the case of the respondent/plaintiff that the agreement was executed by the present appellant/defendant in favour of the deceased husband of the plaintiff i.e. Dr. Thomas Mathews. Therefore, she filed the suit for specific performance. The suit was dismissed by judgment and decree dated 6th April, 2011, hence the present respondent preferred Regular Civil Appeal No. 500 of 2012. The said appeal was partly allowed and the judgment and decree of the trial court was set aside and the matter was remanded back to the trial court with the following directions. The directions are reproduced hereunder:-

"1] Regular Civil Appeal No. 500/2012 is allowed and the impugned judgment and decree of the learned trial court is set aside and the matter is remanded back to the trial court with following directions:

{a} The learned trial court shall re-admit the suit on its original number.

{b} The learned trial court is directed to give an opportunity to both parties to lead evidence on the point whether the agreement for sale exh.33 is executed in favour of deceased Dr. Thomas Mathews in his personal capacity or as Chairman of Native Missionary Movement, and to decide the suit afresh by considering the provisions of Order 1 Rule 10(2) of Civil Procedure Code.

{c} The evidence led earlier shall form part of record.

{d} Both parties are directed to appear before the trial court on 10.06.2019.

2] In such circumstance, no order as to costs.

3] Decree be drawn up accordingly."

5. The learned counsel appearing for the appellant states it is nobody's case in suit that the agreement was executed in favour of Native Missionary Movement. In fact, the suit was specifically filed on the ground that the present appellant had executed the suit agreement in the name of one Dr. Thomas Mathews. The learned counsel for the appellant further submitted that perusal of the written statement also shows that it was not even the case of the appellant that the agreement was executed in favour of Native Missionary Movement and/or Dr. Thomas Mathews had executed the agreement on behalf of the Native Missionary Movement. The learned counsel for the appellant therefore submits that the issue that has been directed to be decided by the trial court in fact never arose in the facts and circumstances of the case. He therefore submits that there was no reason to remand the matter back to the trial court for deciding afresh. He submitted that necessary issues were framed by the trial court and after exhaustive evidence, the trial court had dismissed the suit on merit. He therefore submitted that the reasons recorded by the first appellate court do not warrant any remand for retrial of the suit.

6. The learned counsel for the respondent submits that in view of the evidence that was led by the parties it had come on record that Native Missionary Movement was necessary party and there was

finding recorded by the learned trial Court that the suit suffers from non-joinder of necessary party. The learned counsel therefore submitted that in view of the evidence that was on record, the first appellate Court rightly remanded the matter for deciding as to whether the suit agreement was executed in favour of deceased Dr. Thomas Mathews in his personal capacity or as Chairman of Native Missionary Movement. He therefore supports the order of remand and submits that the same may be confirmed.

7. I have perused the record of the appeal from order as well as pleadings of the parties.

8. The suit as filed by the respondent is a suit for specific performance on the ground that the agreement was executed by the present appellant in favour of her deceased husband and hence she claims that she is entitled for specific performance of the suit agreement.

9. Perusal of the written statement of the present appellant shows that the appellant has denied the contentions raised by the plaintiffs and has pleaded that the amount was already re-paid to Dr. Thomas Mathews and there was no question of execution of any sale deed as contended by the respondent-plaintiff. Perusal of the written statement shows that it is not the case of the appellant that the agreement was executed in favour of Native Missionary Movement and Dr. Thomas Mathew had signed the agreement on behalf of the

Native Missionary Movement. The point as discussed with respect to whether Dr. Thomas Mathews was Chairman of Native Missionary Movement or not would have no bearing with respect to the suit agreement. It is not the case of the either parties that the suit agreement was executed in favour of Native Missionary Movement and/or Dr. Thomas Mathew had signed the agreement on behalf of Native Missionary Movement.

10. Plain reading of the pleadings show that the issue that has been directed to be decided by way of remand does not arise in the suit at all. Perusal of the issues that were framed by the learned trial court also does not reveal that any such issue had arisen in the suit on the basis of pleadings of the parties. I therefore see no reason to remand the matter for the purpose of deciding the issue that has been directed to be decided by the appellate court. On the basis of the pleadings, the issues are already framed by the trial court and there is a judgment and decree by the trial court which is challenged by the respondent before the first appellate court. Hence, it is expected that the first appeal be decided on its own merits, on the basis of available pleadings as well as evidence. Order of remand in present case will unnecessary delay the final disposal of the proceedings.

11. Hence, the impugned order of remand is quashed and set aside and the Regular Civil Appeal No. 500 of 2012 is restored to the file of the concerned District Judge at Aurangabad for hearing on its own merits.

12. The parties to appear before the court of the concerned District Judge at Aurangabad on 13th April, 2023. No formal notice of appearance would be necessary.
13. The appeal from order is accordingly disposed of.
14. Since the appeal from order is disposed of, the civil application does not survive and the same is disposed of.
15. The parties are at liberty to make appropriate application before the concerned district judge for expeditious hearing.

[GAURI GODSE, J.]