



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.36 OF 2021

Shripat Bhaurao Ingale,
Age 79 years, Occu. Agri.,
R/o Ghulewadi, Tal. Sangamner,
District Ahmednagar.

... Appellant.

Versus

1. Baijabai Bhaurao Ingale (Dead),
2. Mahipat Bhaurao Ingale,
Age 73 years,
3. Milind Shripat Ingale,
Age 46 years,
4. Motilal Bhaurao Ingale (Dead),
5. Vijay Motilal Ingale,
Age 51 years,
6. Raju Motilal Ingale,
Age 47 years,
7. Sunil Motilal Ingale,
Age 45 years,

Occupation of all Res. - Agriculture,
All R/o Jorve, Tal. Sangamner,
District Ahmednagar.

8. Savitribai Shankar Lonari,
Age 89 years, Occu. Agriculture,
R/o Brahmangaon, Tal. Kopargaon,
Dist. Ahmednagar.
9. Harnabai @ Laxmibai Haribhau Milkhe,
Dead through L.Rs.

- 9A Bhausahab Haribhau Milkhe,
Age 43 years, Occu. Agriculture,
R/o Milkhe Wasti, At & PO Chichondi Shiral,
Tal. Pathardi, Dist. Ahmednagar.
10. Parvatabai Jagannath Aadhav,
Age 70 years, Occu. Agriculture,
R/o Lauki Shirasgaon,
Tal. Yewala, Dist. Nashik. ... Respondents.

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Advocate for Appellant : Mr. Bhide Vinod Y.
Advocate for Respondent No.2, 9A : Mr. Ankush N. Nagargoje.
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CORAM : S. G. MEHARE, J.
DATE : 01.12.2023

ORAL JUDGMENT :-

1. Heard the learned counsel for the appellant and learned counsel for the contesting respondent Nos.2 and 9A. Rest of the respondents were served, but they did not appear.
2. **Admit.**
3. Following substantial question of law is formulated ;

(a) Whether the impugned judgment and order affects the rights of the appellant ?
4. Regular Civil Appeal No.26 of 2003 was listed for final hearing from 11.09.2013. However, neither the appellant nor respondents shown the interest in getting the appeal and cross

objection decided. The Court has granted a last chance to the learned counsel appearing for the appellant. However, on the next date, again the adjournment was sought. The First Appellate Court was not satisfied with the reasons mentioned in the application. The learned District Judge-1 referring to the earlier order of rejection of the application for adjournment, considered the application for re-admission of the appeal. The Court observed the conduct of the appellant's counsel. He also observed that Order XVII Rule 1 of the Civil Procedure Code provides that no adjournment more than three could be granted during the hearing. Learned First Appellant Court did not satisfy with the reasons assigned for re-admission and rejected the application.

5. Learned counsel for the appellant would submit that the reasons assigned for re-admitting the appeal were genuine and probable. No deliberate adjournments were sought. Only for two occasions, the adjournment was sought. The mandate of Order XVII Rule 1 could have been applied. Learned counsel for the appellant would submit that the substantial issue of the rights and title of the appellant was involved in the case. He was the exclusive owner of the properties partitioned. Hence, by taking a liberal approach, an opportunity may be granted.

The decree is still not executed. He prayed to allow the appeal.

6. Per contra, the learned counsel for the contesting respondents would submit that the Court erred in not keeping the cross objection alive. He supported the impugned judgment and order of the First Appellate Court.

7. Perused the impugned judgment and order. The reasons were that the paper book could not be prepared due to Diwali Vacation. Certain relevant documents were not available with the appellant. Hence, he could not produce it along with affidavit. On the date fixed for the argument, the appellant could not attend the Court, as he was busy in his agricultural activities and he fell sick.

8. The First Appellate Court is correct that the presence of the appellant in appeal is not essential. However, possibility of not getting the paper book due to Diwali Vacation and non submission of documents cannot be ruled out. This Court is not oblivious about the practice of seeking adjournment at the Trial Court, but the interest of the litigant is to be protected and they shall not suffer for the mistakes of the lawyers appointed by them. So, in the interest of justice, the appeal from order deserves to be allowed. Therefore, the substantial

question of law is answered in affirmative. Hence, the following order :

ORDER

- (i) The Appeal is allowed.
- (ii) The impugned judgment and order of District Judge-1, Sangamner passed in Misc. Civil Application No.56 of 2014, dated 16.01.2021 is set aside.
- (iii) Regular Civil Appeal No.26 of 2003 along with cross objection is re-admitted to its original number.
- (iv) The parties are directed to appear before the First Appellate Court on 02.01.2024 and argue the matter without fail. Their rights to file other application except adjournment are not taken away. If again, the matter is tried to be protracted, the impugned order passed in Misc. Civil Application No.56 of 2014, dated 16.01.2021 and cross-objection would be restored automatically.
- (v) The appellant do pay the costs of Rs.5,000/- to the contesting respondents before the First Appellate Court.

(S. G. MEHARE, J.)

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vmk/-