

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

18 SECOND APPEAL NO.472 OF 2013

MANOHARLAL MOHANLALL MANDAN (DIED) TH LRS
MESODEVI MANOHARLAL MANDAN AND ORS
VERSUS
RAMCHANDRA MOHANLAL MANDAN AND ORS

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Advocate for Appellants : Mrs. Deshmukh Charuta Sunil.

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CORAM : S. G. MEHARE, J.
DATE : 27.10.2023

PER COURT :-

1. Heard the learned counsel for the appellants.
2. One of the brothers has approached this Court against the judgment and decree of the partition. The appellant was served with the suit summons. He appeared, but did not file written statement. The Court proceeded ahead. The plaintiff examined a sole witness. The present appellant did not cross-examine him. The appellant never requested the Trial Court to recall the witness for cross-examination atleast on law point. He did not raise the specific grounds for remitting the matter as opportunity to cross-examine the witness was not granted to him.
3. The Appellate Court dismiss the appeal on merits.

4. Learned counsel for the appellants would submit that the First Appellate Court denied to remit the matter on the sole ground that there was no ground in the appeal memo for remand. This is the substantial question of law involved in the case.

5. Perused the judgments and decrees. Remittal of the suit is governed under Order XLI Rule 23-A of the CPC. Remand of matter is not a routine course. There must be ground for remand. Bare request for the demand is also not binding upon the Court. If any issues were remained to be framed or unanswered, then, the Appellate Court may consider for the remand of the case. However, Order XLI Rule 24 of the CPC provides that where the sufficient material is available, the Appellate Court shall determine the issues on merit. Here the case was worst. There was no defence raised by the appellant. Issues are framed upon the averments of the plaint and the written statement. In the absence of written statement, there was no question to frame the issue. It was a suit for partition. The share of the appellant has not been affected. Considering the facts and circumstances of the case, this Court is of the view that there is no substantial question of law has been involved in the case.

6. Hence, the second appeal stands dismissed at admission stage.

(S. G. MEHARE, J.)

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vmk/-