

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.486 OF 2017

WITH

CIVIL APPLICATION NO.25 OF 2020

WITH

CIVIL APPLICATION NO.24 OF 2020

WITH

CIVIL APPLICATION NO.23 OF 2020

WITH

CIVIL APPLICATION NO.615 OF 2017

IN

APPEAL FROM ORDER NO.486 OF 2017

- | | |
|---------------------------------------|---|
| 1. Kasabai Bapu Sawant |] |
| (Deceased) through L.Rs. |] |
| 1A. Bhimrao Bapu Sawant |] |
| (Since deceased through L.Rs.) |] |
| 1A(i). Tulsabai Bhimrao Sawant |] |
| Age : 75 Years, Occu. Nil |] |
| 1A(ii). Amit Bhimrao Sawant |] |
| Age : 38 Years, Occu. Service |] |
| 1A(iii). Shailendra Bhimrao Sawant |] |
| Age : 35 years, Occu. Service, |] |
| Nos.1A(i) to 1A(iii) are R/at – |] |
| Bldg.No.200, Room No.A-7987, |] |
| Kannamwarnagar, Vikhroli (E), Mumbai. |] |
| 1A(iv). Lata Prasannajit Kamble |] |
| Age : 41 Years, Occu. Service |] |
| R/at. D.A.E. Quarter Anushakti Nagar, |] |
| Mumbai – 400 094. |] |

- 1A(v). Manisha Sudhir Gade]
 Age : 45 years, Occu. Housewife,]
 R/At – Bldg.No.200, Room No.A-7987,]
 Kannamwarnagar, Vikhroli (E), Mumbai.]
- 1C. Kantabai Uttamrao Kamble]
 Age : 65 Years, Occu. Housewife,]
 R/At : Vaduth, Tal & Dist – Satara.]
- 1D. Satyabhama Pandharinath Jagtap]
 Age : 70 Years, Occu. Nil,]
 R/At : Mumbai BEST Quarter D-204,]
 Saibaba Marg, Parel, Mumbai.]
2. Bhimrao Bapu Sawant (deceased)]
 Through L.Rs.]
- 2A. Tulsabai Bhimrao Sawant]
 Age – 75 Years, Occu. Nil]
- 2B. Shailendra Bhimrao Sawant]
 Age – 35 Years, Occu. Service]
- 2C. Amit Bhimrao Sawant]
 Age – 38 Years, Occu. Service]
3. Sunita Vijay Sawant]
 Age : 48 Years, Occu. Housewife]
4. Harshvardhan Vijay Sawant]
 Age : 40 Years, Occu. : Service]
 Both 3 & 4 are R/at – Warli, B.D.B. Chawl]
 No.89, Room No.74, Worli, Mumbai – 18.]
5. Sumit Vijay Sawant]
 Age – 27 Years, Occu. : Labourer]
 R/at – Warli, B.D.B. Chawl No.89,]
 Room No.74, Worli, Mumbai – 18.]
6. Chenda Krushna Sawant]
 (Since Deceased through L.Rs.)]
- 6A. Charandas Chenda Sawant]
 Age : 73 Years, Occu. Retired]
 R/at – Tilak Nagar, Bldg.No.60, R.No.2151,]
 Chembur, Mumbai – 89.]

6B. Namdev Chenda Sawant	]	
Age : 71 Years, Occu. Agri.	]	
R/at – Khatav, Tal – Khatav, Dist – Satara,	]	
6C. Dhruv Chenda Sawant	]	
Age : 60 Years, Occu. : Retired	]	
R/at – Room No.1, Bldg.No.D-6, Sector-18,	]	
Nerul, Navi Mumbai.	]	
6D. Mukund Chenda Sawant	]	
Age : 55 Years, Occu. : Service	]	
R.No.63, Bldg.No.A/2, B.G.Q.A. Colony,	]	
Jagdusha Nagar, Ghatkopar, Mumbai-400086.	]	
6E. Gokul Chenda Sawant	]	
(Since deceased through L.Rs. As Above	]	
Resp.Nos.8A to 8D, however, they have not	]	
been brought on record in R.C.A.No.483/2010)	]	
6F. Godabai Shukracharya Kadam	]	
(Since deceased through her L.Rs.)	]	
6F(i) Sandeep Shukracharya Kadam	]	
Age : 40 Years, Occu. Service.	]	
6F(ii) Sujata Dada Pawar	]	
Age : 45 Years, Occu. : Housewife	]	
Both R/at – R.No.172, Yadogopal Peth,	]	... Proposed Legal
Satara, Tal & Dist. Satara	]	Heirs

Versus

1. Sopan Baburao Vidhate	]
(Since deceased through L.Rs.)	]
1(A). Shri Arvind Sopan Vidhate	]
Age : 44 Years. Occu. Agri.	]
1(B). Shri Ashok Sopan Vidhate	]
Age : 42 Years, Occu. Agri.	]
Both Respondent Nos.1(A) & 1(B) are	]
R/at- Khatav, Tal. Khatav,	]
Dist. Satara 415505.	]
2. Ashok Sarjerao Sawant	]
Age : 58 Years, Occu. - Labourer	]
R/at – Khatav, Tal. Khatav, Dist. Satara.	]
3. Sakhubai Sarjerao Sawant (Since Deceased)	]

4. Laxmibai Sarjerao Sawant]
 (Since Deceased, through her L.Rs. as]
 Respondent Nos.2 & 3 abovenamed)]
5. Sonabai Ganpat Sawant]
 (Since Deceased through L.Rs.)]
- 5A. Anand Ganpat Sawant]
 (Since Deceased through L.Rs.)]
- 5A(i). Hirabai Ananda Sawant]
 Age – Adult, Occu. - Housewife]
- 5A(ii). Yogesh Ananda Sawant]
 Age – Adult, Occu. - Service]
 Both 5A(i) & 5A(ii) R/at – D-402,]
 Shreeram Residency, near Abhidarshan]
 Garden, Ganesh Mandir, Titwala (E) -]
 401605.]
- 5B. Uttam Ganpat Sawant]
 (Since Deceased through L.Rs.)]
- 5B(i). Maya Uttam Sawant]
 Age : 60 Years, Occu. : Housewife,]
- 5B(ii). Vinesh Uttam Sawant]
 Age : 38 Years, Occu. : Business,]
 Both 5B(i) & 5B(ii) R/at – 202 Ayushi]
 Apartment, Manvel Pada, Datta Mandir]
 Road, Virar (E).]
- 5C. Mohan Ganpat Sawant]
 (Since Deceased through L.Rs.)]
- 5C(i). Mangal Mohan Sawant]
 Age : 48 Years, Occu. : Labourer.]
- 5C(ii). Rupesh Mohan Sawant]
 (Since Deceased without leaving L.R.s)]
- 5C(iii). Mukund Mohan Sawant]
 Age : 27 Years, Occu. : Labourer]
 Both 5C(i) & 5C(iii) are R/at – Warli,]
 B.D.W. Chawl No.99, Room No.21,]
 Worli, Mumbai – 18.]
6. Baba Nana Nalawade]
 Age : Adult, Occu. : Housewife,]
 R/at – Bombale, Post – Katarkhatav,]
 Tal. - Khatav, Dist. - Satara.]

- | | | |
|---|---|-----------------|
| 7. Sarubai Bandu Sawant |] | |
| Age : Adult, Occu. : Housewife, |] | |
| R/at – Khatav, Tal. - Khatav, Dist. - Satara. |] | |
| 8. Shashikant Bapu Sawant |] | |
| Age : 60 Years, Occu. - Agri. |] | |
| (As Orig. Resp No.1B as L.R. of Deceased 1A |] | |
| & independent Resp. No.3 in |] | |
| R.C.A.No.483/2010 |] | ... Respondents |

Mr. Rajaram V. Bansode for Appellants.

Mr. K. P. Shah for Respondent No.1.

CORAM :- SANDEEP V. MARNE, J.

DATE :- 20 DECEMBER, 2023

JUDGMENT :

1. ***Admit.*** With the consent of the learned counsel for parties, the Appeal is taken up for hearing.

2. This Appeal is filed by the Appellants challenging the Judgment and Order dated 30 March 2017 passed by the District Judge-1, Vaduj, remanding Regular Civil Suit No.159/1992 for fresh decision. The Appellant had instituted R.C.Suit No.159/1992 for partition of the suit property. By the Judgment and Decree dated 07 April 2007, the suit came to be decreed apportioning various shares in the suit property in favour of the Plaintiffs and the Defendants. The trial Court directed effecting of partition under Section 54 of the Code of Civil Procedure, 1908.

3. Aggrieved by the Judgment and Decree dated 07 April 2007, original Defendant No.10 Sopan Baburao Vidhate filed Regular Civil Appeal No.483/2010 in the District Court, Satara at Vaduj. When the Appeal came up for hearing, the said original Defendant No.10 filed

application for production of additional documents on 17 March 2017. On 30 March 2017, the Respondent No.3 before District Court filed a pursis agreeing for remand of the suit for fresh trial since he desired to lead additional oral and documentary evidence to deal with the additional documents filed by the Appellant therein. Taking note of the pursis dated 30 March 2017, the First Appellate Court proceeded to pass Judgment and Order dated 30 March 2017 setting aside the Decree dated 07 April 2007 and has remanded R.C.Suit No.159/1992 for a fresh decision in respect of the suit land bearing Survey No.184 at Village Khatav, Taluka Khavav, District Satara. The first Appellate Court had further directed the trial Court to frame necessary issue in respect of the land bearing Survey No.184 by giving opportunity to the parties to file their pleadings. The trial Court has further been directed grant of opportunity to the parties to lead oral as well as documentary evidence. The Appellants herein (who are other Respondents before District Court and who did not file any pursis for remand) are aggrieved by the order dated 30 March 2017 passed by the First Appellate Court and have filed the present Appeal.

4. Mr. Bansode, learned Counsel appearing for the Appellants would submit that the pursis dated 30 March 2017 was filed only by the Respondent No.3 before the first Appellate Court. That, the other Respondents therein (Petitioners herein) had not filed any pursis. That, the lower Appellate Court erroneously treated the said pursis as having been filed by all the Respondents before it. That, the order of remand is made solely by relying upon the pursis filed by the Respondent No.3. That, mere filing of additional documents by the Appellant before the District Court could not have been a reason to direct remand of Appeal. He would pray for setting aside the order of remand passed by the lower Appellate Court.

5. *Per Contra* Mr. Shah, learned counsel appearing for Respondent No. 1 herein would submit that the pursis was actually filed by all the contesting Respondents before the District Court. That, the pursis itself mentioned that the same was filed on behalf of Respondent Nos.1C, 2, 3, 6 and 7A to 7D. That, all the said Respondents had engaged common Advocate and merely because the pursis is signed by one of the Respondents, the same cannot be a reason to draw a presumption that the other Respondents did not desire remand of the suit. That, the other Respondents had authorized the Advocate to file all necessary applications and therefore pursis filed on their behalf by the Advocate cannot be disowned by them. He would further submit that if indeed there was any fraud or misrepresentation, the Appellants herein would have challenged the order dated 30 March 2017 immediately. However, the Appeal is filed by way of an afterthought in June 2017 thereby belying the theory of non-filing of pursis dated 30 March 2017 by other Respondents.

6. Mr. Shah would further submit that in addition to the remand pursis, the lower Appellate Court has recorded findings justifying the order of remand. That, the lower Appellate Court has felt it necessary to remand the suit for fresh trial in the light of other additional documents filed by the Appellant before it, especially with regard to the land bearing Survey No. 184. That, the order of the lower Appellate Court does not suffer from any error and therefore, the present Appeal deserves to be dismissed.

7. Rival contentions of the parties now fall for my consideration.

8. The suit filed by the original Plaintiffs for partition in the year 1992 came to be decreed after 15 long years on 07 April 2007 where the trial Court allocated shares in the suit land to the Plaintiffs and the Defendants. Only one Defendant i.e. Defendant No.10 chose to file Appeal challenging the Decree of the trial Court. His Appeal instituted in the year 2009 in District Court, Satara, was transferred to District Court at Vaduj in the year 2010, and remained pending for next 7 years. After 7 long years, the original Defendant No.10 thought of filing 10 additional documents by his application dated 17 March 2017, which mostly relate to revenue entries. It appears that an order was passed by the learned Judge on that application on 17 March 2017 'Production Allowed'. About 13 days later, Shashikant Bapu Sawant (Original Plaintiff No.3/Respondent No.3 in the Appeal) filed a pursis at Exh.80 on 30 March 2017. Though only Shashikant Bapu Sawant filed the said pursis, it is stated in the pursis that the same is filed on behalf of Respondent Nos.1C, 2, 3, 6 and 7A to 7D. A vague statement was made in the pursis that the Respondent Nos.1C, 2, 3, 6 and 7A to 7D desired to lead additional oral and documentary evidence in response to the additional documents filed by the Appellant. For this reason, the Respondent No.3 requested for remand of entire R.C.Suit No.159/1992 before the trial Court for decision on merits. An addition appears to have been made in different handwriting that the Appellant therein desired to file written statement and lead evidence. It is incomprehensible as to how and why the Respondent No.3 could state in his pursis that the Appellant should be granted opportunity to file written statement and lead evidence. The pursis is signed only by the Respondent No.3 and by the Advocate. Though it is sought to be contended that it is normal practice in the Trial Court for the Advocate to sign and file pursis on behalf of his clients, in the present case, the effect of the pursis was drastic. It entailed partial

allowing of Appeal and setting aside the Decree earned by the Plaintiffs. In such circumstances, it cannot be said that the absence of signatures by the other Respondents on the pursis can be taken lightly. In my view, therefore, the order of remand could not have been made on the basis of pursis dated 30 March 2017.

9. Though Mr. Shah has made strenuous efforts to impress upon me that pursis is not the only reason for ordering remand, I do not find any discussion by the District Judge as to why the remand of the suit filed in the year 1992 and decreed on 07 April 2007 was warranted. In this regard, the findings recorded by the District Judge for ordering remand in paragraph 7 of the Judge read thus :

“7. Appellant has produced revenue record, decisions of revenue authorities and decision of 32G of tenancy authority and other relevant documents in respect of land bearing survey no.184 of village Khataav. Ld. Advocates for appellants and respondents both fairly submitted that the documents which are filed by the Appellants herein the appeal proceeding were not before the Ld. C.J.J.D. Vaduj. Since the relevant documents were not produced in the original suit, those were not taken into consideration for adjudicating claim of the parties in respect of suit land bearing survey No.184. The documents in respect of land bearing survey No.184 are filed first time in appeal by the appellant, there are triable issues, it needs to be adjudicated by giving opportunity to both parties, for deciding the point in controversy between the parties. In view of common purshis filed by both the parties, it would be just and proper to remand the matter to the Ld. C.J.,J.D. Vaduj to decide afresh by giving opportunity to both parties to lead additional evidence if any, in respect of only suit land bearing survey No.184. Hence, the interference is required in the impugned judgment and decree dated 7-4-2007 in respect of suit land survey No.184. Accordingly, I answer Point No.1 in affirmative and to the Point No.2, I proceed to pas following order :”

10. There is thus no discussion as to how production of documents relating to land at Survey No. 184 rendered the decree unsustainable or why remand became necessary. The law by now is well settled that the Appellate COurt cannot remand a Suit for fresh trial in a routine manner. In this regard following observations of this Court in ***Vasant Bhakar Thakur Vs. Sitaram Waman Thakur***¹ are relevant :

¹ AO No.609/2022, decided on 29 August 2023

“12. Powers of the Appellate Court while deciding Appeals are governed by the provisions of Rules 23, 23A, 24, 27 and 33 of Order 41 of the Code of Civil Procedure, which read thus :

“23. Remand of case by Appellate Court - Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other cases.-Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

24. Where evidence on record sufficient, Appellate Court may determine case finally.-Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which Appellate Court proceeds.

27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may

allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.

33. Power of Court of Appeal.

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

Provided that the Appellate Court shall not make any order under section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.”

13. *Thus while deciding an Appeal, the Appellate Court is required to pronounce judgment when the evidence on record is insufficient for enabling it to decide the Appeal. While doing so, the Appellate Court is empowered to resettle the issues. The Appellate Court is also empowered under the provisions of Rule 27 of Order 41 to permit parties to produce additional evidence, whether oral or documentary where it is found that the trial Court has refused to admit evidence which ought to have been admitted or where any party makes out a case of lack of knowledge or inability to produce such evidence before the Trial Court or where the Appellate Court itself requires a document to be produced or witness to be examined for effective decision of the Appeal.*

14. *No doubt, the Appellate Court is empowered under the provisions of Rules 23 and 23A of Order 41 of the Code to remand the suit to the Trial Court. Rule 23 provides for remand by the Appellate Court where the suit is disposed of upon a preliminary point. Rule-23A deals with remand in cases where the suit is disposed of otherwise than on a preliminary point. Under Rule 23A, remand can be made only in the event the decree is reversed in appeal and retrial is considered necessary.*

15. *The scope of power of Appellate Court to remand a suit has been a subject matter of various decisions of the Apex Court. It may be apposite to refer to a recent judgment of the Apex Court in Sirajudheen V/.s.*

Zeenath and Others 2023 SCCOnline 196 (Civil Appeal No. 1491/2023 decided on 27 February 2023). The Apex Court took note of its past decisions and held in pars-25, 29, 30 and 31 as under:

“25. In the case of Sanjay Kumar Singh (supra) relied upon by the learned counsel for the respondent No. 1, this Court has observed as under: -

“7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

8. As observed and held by this Court in A. Andisamy Chettiar v. A. Subburaj Chettiar [(2015) 17 SCC 713], the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.”

29. After having taken note of the salient features of the impugned judgment as also the significant omissions therein, if we refer to the provisions empowering the Appellate Court to make an order of remand, it is difficult to find any justification for remand by the High Court in the present case. As noticed, the scope of remand in terms of Rule 23 of Order XLI CPC is extremely limited and that provision is inapplicable because the suit in question had not been disposed of on a preliminary point. The remand in the present case could only be correlated with Rule 23-A of Order

XLI CPC and for its applicability, the necessary requirements are that “the decree is reversed in appeal and a re-trial is considered necessary”. As noticed hereinabove, there is no reason whatsoever available in the impugned judgment as to why and on what basis the decree was reversed by the High Court. Obviously, the reversal has to be based on cogent reasons and for that matter, adverting to and dealing with the reasons that had prevailed with the Trial Court remains a sine qua non. Thus, remand in the present case cannot be held justified even in terms of Rule 23-A of Order XLI CPC.”

30. On the facts of the present case and the nature of order passed by the High Court, the enunciations and observations in the case of *Sanjay Kumar Singh (supra)* are of no application whatsoever as none of the parties have sought any permission to adduce evidence nor the High Court has specified as to what specific evidence was considered necessary to enable it to pronounce judgment or for any substantial cause. Moreover, it does not appear from the judgment of the High Court if the plaintiff- respondent No. 1 (appellant before the High Court), ever projected that the Trial Court did not allow her to produce any evidence that was sought to be produced. It is also not borne out if any of the parties at all made out any case for production of additional documents or oral evidence with reference to the applicable principles. Hence, the general observations of the High Court cannot be correlated with Rule 27(1) either. With respect, we are constrained to apply the observations of this Court in *Municipal Corporation, Hyderabad (supra)* to say that the present order of remand has been passed only on ipse dixit of High Court sans any reason or justification.

31. It gets perforce reiterated that in the suit filed by respondent No. 1, the Trial Court had indeed returned its findings on the basis of evidence on record. Whether those findings are sustainable or not is a matter entirely different and the High Court may examine the same but merely because the High Court could not reach to a conclusion on preponderance of probabilities, the evidence on record could not have been treated as insufficient so as to not pronounce the judgment in terms of Rule 24 of Order XLI CPC.”

(emphasis supplied)

16. It is also well settled that the power to remand a suit cannot be exercised by an Appellate Court in a routine manner. In ***Shivkumar and Others V/s. Sharanabasappa and Ors.*** (2021) 11 SCC 277, a three Judge

Bench of the Apex Court has expounded the law on scope of remand of suit by Appellate Court and has held in para-26.4 as under :

“26.4 A conjoint reading of Rules 23, 23-A and 24 of Order 41 brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an Appellate Court is to follow the mandate of Rule 24 of Order XLI CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a re-trial is considered necessary that the Appellate Court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the Trial Court may not be considered proper in a given case because the First Appellate Court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.”

17. After considering the relevant provisions of the Code and sound exposition of law in the above decisions, it is clear that the appellate court is expected to decide the appeal by determining correctness of the findings recorded by the trial court with reference to the evidence on record and applicable law. Merely failure of the Trial Court to consider or inappropriateness in considering evidence on record cannot be a ground for remanding the suit to the trial court. Also, power to remand suit for fresh trial is to be exercised in exceptional circumstances by the Appellate Court. It cannot be exercised in a routine manner. Retrial cannot be ordered just because the Appellate Court finds fault in the findings recorded by the trial Court. The Appellate Court is also vested with power of framing additional issues and permitting the parties to lead additional evidence if it has formed an opinion that the subject matter of dispute cannot be effectively decided without framing of such additional issues or leading additional evidence. However, power to remand the suit for trial cannot be exercised in a casual manner just because the Appellate Court does not agree with the findings recorded by the Trial Court. Unnecessary remand of a suit results in elongation of litigation, which should ordinarily be avoided by the Appellate Court.”

11. The findings recorded by the District Judge for ordering the remand in the instant case are totally unsustainable. Mere failure on the part of original Defendant No.10 to produce the documents relating to revenue records of land bearing Survey No. 184 before the trial Court could not have been a reason for ordering remand of the suit.

12. The Appellate Court ought to have been little more sensitive to the fact that the suit for partition was filed in the year 1992 and instead of deciding the Appeal on merits, the Appellate Court desired that the suit, which remained pending for 15 years, should be decided afresh. The remand order envisages full-fledged trial in which the parties are given opportunity to file pleadings as well as to lead oral and documentary evidence. In such circumstances, the approach of the District Judge in ordering a remand in a routine manner by taking cognizance of pursis filed only by one of the Respondents before it is totally erroneous.

13. I, therefore, find the order passed by the District Judge to be indefensible. The Appeal accordingly succeeds. The Judgment and Order dated 30 March 2017 passed by the District Judge-1, Vaduj is set aside. Regular Civil Suit No.159/1992 is restored on the file of District Judge-1, Vaduj, who shall decide the same on its own merits uninfluenced by any of the observations made in the Judgment dated 30 March 2017 or in the present Judgment. The Appellant before the District Court, who has filed additional documents, shall be entitled to rely on the same subject to provisions of Order 41 Rule 27 of the Code. All contentions in that regard are left open. Considering the pendency of litigation between the parties since 1992, the District Court shall accord due priority to decision of the

appeal. Parties to cooperate with the District Court for expeditious disposal of the appeal.

14. With the above observations, the Appeal is allowed. There shall be no order as to costs.

15. In view of disposal of Appeal, Civil Applications do not survive and the same are also disposed of.

(SANDEEP V. MARNE, J.)

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