



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 1403 of 2020

Dineshchand Suganchandji Kotahri and another

Versus

Ravi Raghoji Dudhe

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.R.Saboo, Advocate for the petitioners.

Shri A.D.Tote, Advocate for the sole-respondent.

CORAM : ANIL S. KILOR, J.

DATED : 23rd OCTOBER, 2023.

Heard.

2. The petitioners are the original plaintiffs who filed the suit for specific performance which was decreed and in an appeal filed thereupon the decree was set aside and the matter was remanded back to the trial Court to grant an opportunity of argument to both the parties and to decide the suit afresh by giving fresh findings on all issues.

3. Thereupon, the petitioners moved an application to call Taluka Inspector Land Record as a witness to prove document namely map prepared by him on the basis of measurement dated 12/13th April,

2005. The said application came to be rejected vide impugned order dated 7th February, 2020 passed by the learned Civil Judge, Senior Division, Darwha in Special Civil Suit No. 29 of 2009, which is the subject matter of the present writ petition.

4. From the record it is apparent that as the learned Appellate Court while remanding the matter back to the trial Court has held that the trial Court has neither gone into the issue whether the plaintiffs were ready and willing to perform their part of contract nor recorded any negative finding in that regard in the judgment.

5. The learned Appellate Court therefore has held that the matter needs to be remanded back to the trial Court for hearing of fresh arguments of both parties on all issues and for disposal of the same. For this purpose paragraph 27 of the lower Appellate Court is relevant wherein the purpose of remand was stated. Accordingly, the learned Lower Appellate Court passed the judgment and decree dated 19th September, 2018 and operative part of the order reads thus:

“ORDER

1. Both Appeal are party allowed.
2. The impugned judgment and decree dated 6th February, 2012 in Special Civil Suit No. 29 of 2009 passed by learned Civil Judge, Senior Division, Darwha is hereby set aside.

3. The above Special Civil Suit No. 29 of 2009 shall be remanded to learned trial Court to give opportunity of argument to both parties and to decide the suit as fresh by giving fresh findings on all issues.

4. Both rival parties of the suit shall remain present before learned trial Court on 19.10.2018.

5. Both parties shall bear their own costs of appeal.

6. Original copy of this judgment be kept in Regular Civil Appeal No. 25/2012 and its true copy be kept in Regular Civil Appeal No. 26/2012.

7. R and Ps be sent back to learned trial Court.”

6. Thus, it is apparent from the judgment and order dated 19th September, 2018 that the matter was remanded back to the learned trial Court to give opportunity for fresh hearing to both the parties on all issues and to decide the suit as fresh by giving fresh findings on all issues. Thus, there is no express or implied liberty granted to the petitioner to apply for calling witness to prove a document after remand of the matter.

7. In the circumstances, I do not find any error committed by the learned trial Court in rejecting the application Exhibit 81. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]