

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 50 OF 2019

Sudhir Nivruttirao Paulkar (Deceased)

Through legal representatives

Renuka Sudhir Paulkar & others

Appellants

Versus

Sopan Madhavrao Paulkar (Deceased)

Through legal representatives

Jankabai Sopan Paulkar & others

Respondents

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Mr. A.D. Wange, Advocate for the appellants.

Mr. T.M. Venjane, Advocate for the respondents.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 22 January 2024.

Order :

1. The original appellant Sudhir Paulkar, who was the original plaintiff in R.C.S. No. 180/2005, has preferred this appeal for challenging the judgment and order dated 25.09.2017 passed by the learned District Judge-1, Nilanga (hereinafter referred to as “the learned first appellate Court”) in R.C.A. No. 57/2010 whereby the learned first appellate Court has remanded the aforesaid civil suit for deciding it afresh on merit by quashing the judgment and decree dated 13.09.2010 therein of Civil Judge, Senior Division, Nilanga (hereinafter referred to as “the learned trial Court”).

2. Heard rival submissions. Also perused the documents on record.

3. Learned Counsel for the appellants pointed out that though there was stay to the proceeding of R.C.S. No. 180/2005 granted by the learned Principal District Judge in one transfer petition, but it was not brought on record by the respondents, and therefore, the judgment and decree in the said suit passed by the learned trial Court was appropriate.

4. On the contrary, learned Counsel for the respondents/defendants, by filing certified copies of the proceedings on record, pointed out that despite stay granted by the superior Court, the learned trial Court proceeded with the suit and decided the same. As such, he supported the impugned judgment and order in R.C.A. No. 57/2010.

5. It is significant to note that the certified copies produced on record clearly indicate that defendant No.1 Sopan had filed transfer petition in respect of the aforesaid suit on 03.08.2010 and at that time the concerned learned Principal District Judge had granted stay to the proceeding of aforesaid suit on 04.08.2010. However, despite there being stay to the proceeding, the learned trial Court has decreed

the aforesaid suit on 13.09.2010. The record shows that the defendants had already filed applications for adjournment on the ground of stay. However, it appears that the learned trial Court did not care to verify the same. As such, during pendency of stay, the act of learned trial Court of deciding the aforesaid suit was definitely not proper. Moreover, the learned first appellate Court has only remanded the matter to be decided on merit. As such, there is no finding on merit by the first appellate Court. An opportunity to the present appellants to establish their case before the learned trial Court is very much there, and therefore, this Court is of the opinion that the appellants cannot be said to be aggrieved by the impugned judgment and order of the learned first appellate Court. As such, no substance is found in the appeal and it stands dismissed. Record and proceeding be sent back to concerned Courts immediately.

(SANDIPKUMAR C. MORE, J.)