



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 17 OF 2017
WITH CA/2043/2017 IN AO/17/2017

1. Jankabai Kalba Shinde (died)
2. Shivaji Kalba Shinde,
Age : 47 years, Occ. : Agriculture,
3. Sambhaji Kalba Shinde,
Age : 42 years, Occ. : Agriculture,
4. Pandhari Kalba Shinde,
Age : 32 years, Occ. : Agriculture,
5. Dnyaneshwar Kalba Shinde,
Age : 29 years, Occ. : Agriculture,
6. Dattatraya Kishan Dikale,
Age : 21 years
(through guardian Appellant No.1
– Jankabai Kalba Shinde)

All R/o. : dhakni, Tq. Loha, Dist. Nanded

... APPELLANTS
(ORI. PLAINTIFFS)

VERSUS

1. Prashant Nagnathrao Paldewar,
Age : 47 years, Occ. : Business,
2. Sau. Vijaylaxmi Nagnathrao Paldewar,
Age : 47 years, Occ. : Business,
3. Nagnath Gandadharrao Paldewar,
Age : 63 years, Occ. : Business,

All R/o. : Vasant Nagar, Nanded,
Tq. and Dist. Nanded

... RESPONDENTS
(ORI. DEFENDANTS)

...

Mr. Amol G. Vasmatkar – Advocate for Appellants
Mr. A.D. Mane h/f. Mr. Amol S. Sawant – Advocate for Respondent
Nos.2 and 3

....

CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 29th January, 2024
PRONOUNCED ON : 4th March, 2024

JUDGMENT :

1. The present appellants who are the original plaintiffs in Regular Civil Suit No.6 of 2009 have challenged the judgment and order dated 13.12.2016 passed by the learned First Appellate Court i.e. District Judge – 1 at Kandhar, Dist. Nanded in Regular Civil Appeal No.37 of 2010. The learned First Appellate Court has set aside the judgment and decree dated 29.06.2010 in the aforesaid civil suit and remanded the matter back to the learned Trial Court i.e. Civil Judge Junior Division, Loha after permitting the present respondents – defendants to file their written statement and to decide the suit afresh.

2. Background facts of the case are as under :

The appellants – plaintiffs had filed Regular Civil Suit No.6 of 2009 for declaration of their ownership and also for perpetual injunction over the suit property mentioned therein. The respondents – defendants after their appearance in the said suit

had filed application under Order VII Rule 11 of Civil Procedure Code for rejection of plaint but the same was rejected by the learned Trial Court on 22.03.2010. The Writ Petition against that order was dismissed and the Review Application against that was not yet prosecuted. The learned Trial Court then on 29.06.2010 decreed the suit in absence of written statement of the respondents – defendants. However, the learned First Appellate Court in the aforesaid appeal set aside the decree passed in the aforesaid civil suit and remanded the matter back to the learned Trial Court. Hence, this appeal.

3. Learned Counsel for the appellants submits that, the learned First Appellate Court has erroneously remanded the matter back to the learned Trial Court even after the suit of the appellants was decided on merit. According to him, the learned First Appellate Court could have decided the appeal on merit or atleast should have given direction to the learned Trial Court on which point it is required to be decided. In support of his submissions he relied on the following judgments :

- (a) Hon'ble Supreme Court in the case of **Jegannathan Vs. Raju Sigamani and Others** in Civil Appeal Nos.3347-3348 of 2012 decided on 02.04.2012

(b) Hon'ble Supreme Court in the case of **Sirajudheen Vs. Zeenath and Others** in Civil Appeal No. 1491 of 2023 decided on 27.02.2023

(c) This Court in the case of **Subhash Vs. Vilas, Indirabai and Pandurang** in Appeal from Order No.76 of 2012 decided on 06.03.2013

4. On the contrary, learned Counsel for respondent Nos.2 and 3 supported the impugned judgment and pointed out that, the respondents – defendants had not filed written statement in the suit and, therefore, the learned First Appellate Court rightly remanded the matter back to the learned Trial Court for giving them opportunity to contest the suit on merit. He also relied on the following judgments :

(a) Hon'ble Supreme Court in the case of **C.N. Ramappa Gowda Vs. C.C. Chandregowda (dead) by LRs and Another** in Civil Appeal No.3710 of 2012 reported in **AIR 2012 SC 2528**

(b) This Court in the case of **Yousuf Mohamad Saudagar Vs. Shaikh Aziz Ismail Master** in Appeal from Order No.10 of 2017 decided on 18.02.2020

5. Heard rival submissions and also perused the documents on record. The sum and substance of the judgment relied upon by the learned Counsel for the appellants is that, the learned First Appellate Court while remanding the case may issue further

direction for trial of certain issues to the learned Trial Court and that the learned First Appellate Court can also determined certain issues or questions of fact to decide the matter finally and that if the evidence is sufficient on record the learned First Appellate Court should not direct *De novo* trial. However, in the instant case the suit of the appellants was decreed in absence of written statement of the respondents – defendants. Moreover, there was also no cross of the appellants’ witnesses by the respondents – defendants. Both the parties appears to have claimed right over the suit property and, therefore, the suit needs to be decided on merit. The observations in the judgments relied upon by the learned Counsel for the appellants – plaintiffs are not at all helpful, since after filing of the written statement by the respondents – defendants the question of framing points or issues will arise. Therefore, at present no points can be framed by the learned First Appellate Court or any direction can be issued. Therefore, there is no substance in the appeal and considering the old nature of the suit it needs to be expedited. As such, the appeal stands dismissed and the *interim* relief granted, if any, shall stands vacated.

6. The learned Trial Court is directed to dispose of the suit i.e.

Regular Civil Suit No. 6 of 2009 as early as possible and preferably within one (1) year from the date of this order.

7. The Appeal from Order is accordingly disposed of alongwith pending Civil Application No.2043 of 2017.

[SANDIPKUMAR C. MORE]
JUDGE