



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

928 APEAL FROM ORDER NO. 5 OF 2021
WITH
CIVIL APPLICATION NO. 3967 OF 2021
IN AO/5/2021

LATE SANDU SAKHARAM AVHALE THROUGH HIS L.RS. POPAT
SANDU AVHALE AND OTHER
VERSUS
VILAS SAHEBRAO SHINDE AND OTHER

...
Mr. Mr. Ubale M. B., Advocate for the Petitioners
Mr. Shrikant S. Shinde, Advocate for Respondent Nos.1, 2, 3, 4A

....

CORAM : SANDIPKUMAR C. MORE, J.
DATED : 08/02/2024.

P. C. :

1. Heard rival submissions.
2. The appeal is directed against the order dated 06/01/2020 passed by the learned Ad-hoc District Judge-4 Aurangabad, in RCA No.145 of 2018 whereby the learned District Judge has remanded the matter back to the trial court i.e. Jt. Civil Judge (J.D.), Kannad for fresh trial by setting aside the judgment and decree dated 25/03/2014 passed by the trial court in RCS No.266 of 2012.
3. Admittedly, the learned trial court while passing decree in the aforesaid suit which was for possession of allegedly encroached

land at the hands of defendants, had observed that the respondents i.e. original defendants despite service remained absent. It is also not in dispute that due to such absence they could not file their written statement and ultimately got decree on the evidence on record. However, after going through the judgment of first appellate court, it appears that there was observation that defendants Nos. 2 to 4 were not duly served with the suit summons as the bailiff report Exhibit-7 did not indicate that all the defendants were residing together or the defendant No.1 who accepted the service was Karta of joint family.

4. The learned counsel for the appellants vehemently argued that even after the remand the respondents / defendants did not file written statement and their application for permission to file written statement also got rejected. However, it is for the learned trial court to take further steps after such rejection. Moreover, the learned first appellate court while remanding the matter, has also imposed cost of Rs.5,000/- upon defendant No.1. The learned counsel for the appellant again pointed out that the said cost has also not been deposited by the defendant No.1. However, the consequence for not depositing the cost can be agitated before the learned trial court. It is the cardinal principle of law that nobody

should be condemned without giving opportunity of hearing and therefore, no perversity is apparent in the impugned order whereby the suit of the present appellant is remanded for fresh trial and that too after imposing the necessary cost. In view of the same, appeal is hereby dismissed and disposed of alongwith the pending civil applications, if any.

(SANDIPKUMAR C. MORE, J.)