



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 65 OF 2023
WITH CIVIL APPLICATION NO. 14062 OF 2023

- 1) Tanaji s/o. Premraj Gunjal (died)
Through his LRs.,
- 1A) Meerabai w/o. Tanaji Gunjal,
Age : 43 years, Occ. : Agriculture,
- 1B) Laxman s/o. Tanaji Gunjal,
Age : 25 years, Occ. : Service.
- 1C) Sanjay s/o. Tanaji Gunjal,
Age : 24 years, Occ. : Service
- 1A to 1C R/o. : Sy. No.8, Jadhavwadi,
Tq. and Dist. Aurangabad
- 1D) Anita w/o. Haridas Mhaske,
Age : 23 years, Occ. : Household,
R/o. Harsul, Tq. and Dist. Aurangabad
- 2) Parasram Premraj Gunjal (died)
Through his LRs.,
- 2A) Chandrakala w/o. Parasram Gunjal,
Age : 45 years, Occ. : Agriculture,
R/o. : Sy. No.8, Jadhavwadi,
Tq. and Dist. Aurangabad
- 2B) Vandana w/o. Krishna Wani,
Age : 23 years, Occ. : Household,
R/o. : Padegaon, Tq. and Dist. Aurangabad
- 2C) Sunita w/o. Santosh Bhrahmakar,
Age : 23 years, Occ. : Household,
R/o. : Harsul, Tq. and Dist. Aurangabad

2D) Vitthal s/o. : Parasram Gunjal,
Age : 19 years, Occ. : Agriculture,

2E) Rohidas s/o. Parasram Gunjal,
Age : 20 years, Occ. : Education,

2D and 2E R/o. : Sy. No.8, Jadhavwadi,
Tq. and Dist. Aurangabad

3. Kailas s/o. Premraj Gunjal,
Age : 48 years, Occ. : Agri. & Business,
R/o. : Sy. No.8, Jadhavwadi,
Tq. and Dist. Aurangabad

... APPELLANTS

(Ori. Plaintiffs)

VERSUS

1. Agricultural Produce Market Committee,
Jadhavwadi, New Mondha, Aurangabad,
Through its Secretary

2. Deputy Collector,
Additional Collector Office,
Collectorate Campus, Aurangabad

3. Special Land Acquisition Officer,
Jayakwadi Project, Collector Office,
Aurangabad

... RESPONDENTS

(Ori. Defendants)

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Mr. B.N. Patil h/f. Mr. Krishna P. Rodge – Advocate for Appellants
Mr. S.S. Thombre – Advocate for Respondent No.1

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 23rd February, 2024

PRONOUNCED ON : 30th April, 2024

JUDGMENT :

1. The appellants who are original plaintiffs have challenged the

judgment and order dated 12.09.2023 passed by the learned 8th District Judge, Aurangabad (*hereinafter referred to as “**learned First Appellate Court**”*) in Regular Civil Appeal No.100 of 2022 whereby the judgment and order dated 18.01.2016 passed by 3rd Civil Judge Senior Division, Aurangabad (*hereinafter referred to as “**learned Trial Court**”*) in Regular Civil Suit No.62 of 2001 has been set aside. The learned First Appellate Court by setting aside the aforesaid judgment and decree has remanded the matter back to the learned Trial Court for deciding afresh.

2. The appellants/plaintiffs had filed the suit bearing Regular Civil Suit No.62 of 2001 against the present respondents for declaration of their ownership over land Survey No.8 to the extent of 2 Hectare 8 Gunthas situated at Jadhavwadi, Tq. and Dist. Aurangabad by setting aside the notice issued by present respondent No.2 dated 06.11.2001. The learned Trial Court decreed the suit in favour of the present appellants. However, the appeal filed by present respondent No.1 has been allowed by the learned First Appellate Court and remanded the matter back to the learned Trial Court as mentioned above. Hence, this appeal.

3. Learned Counsel for the appellants submits that, the learned

First Appellate Court has definitely erred in remanding the matter back to the learned Trial Court. According to him, the learned Trial Court has decided the matter on the strength of documents on record and though there is no opportunity was given to respondent No.1 for leading the evidence, the learned First Appellate Court could have decided the matter on the basis of material on record and for that purpose there was no need to give opportunity to present respondent No.1 to lead the evidence. As such, he prayed for setting aside the judgment and order of learned First Appellate Court.

4. On the contrary, learned Counsel for respondent No.1 opposed the submissions on the ground that, the appellants had manipulated the record which has been corrected by the Sub Divisional Officer. Further, the application of injunction filed by the present appellants after remand has also been rejected. Further, fact of filing of Second Appeal by the present appellants alongwith delay which was rejected, has also been suppressed. As such, he prayed for dismissal of appeal with heavy costs.

5. Heard rival submissions at admission stage.

6. Admittedly, the learned Trial Court decreed the suit of the present appellants by holding them owner of land Survey No.8 to the extent of 2 Hectare 8 Gunthas and that the notice dated 06.10.2000 being illegal and not binding upon them. The learned Trial Court has also granted injunction in favour of the present appellants. However, on going through the judgment and order dated 12.09.2023 passed by the learned First Appellate Court, it is evident that, the learned First Appellate Court has given opportunity to present respondent No.1 i.e. original defendant No.3 to lead the evidence and to cross-examine the plaintiffs. Admittedly, original defendant No.3 was unable to file written statement on record and also did not cross-examine the plaintiffs. As such, considering the principles of natural justice, the act of learned First Appellate Court appears proper. Further, it is important to note that, the learned First Appellate Court had also thought about Order 41 Rule 33 of the Civil Procedure Code in respect of powers of Appellate Court to pass the decree on available material on record. However, it is clearly opined by the learned First Appellate Court that evidence before it was not sufficient to do substantive justice. It is further important to note that, even after remand, the application was filed by the present appellants

for seeking injunction to restrain original defendant No.3 from constructing Shopping Complex and Petrol Pump over the suit property and the same has been rejected. Therefore, considering all these aspects, the observations of the learned First Appellate Court of granting opportunity to defendant No.3 to file written statement and lead evidence definitely appears proper. Such remand appears justifiable in proper adjudication of the matter. Under such circumstances there is no substance in this appeal and the appeal stands dismissed at admission stage.

7. The Appeal from Order is accordingly disposed of along-with pending Civil Application No. 14062 of 2023.

[SANDIPKUMAR C. MORE]
JUDGE