



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 68 OF 2023
WITH CA/14624/2023 IN AO/68/2023

1. Social and Cultural Association,
Kusumba, Tq. And Dist. Dhule,
Through President –
[Mahadu Nago Chaudhari] (deceased),
Newly appointed President –
Anil Mahadu Chaudhari,
Age : 46 years, Occ. : Service,
R/o. : Kusumba, Tq. and Dist. Dhule
2. Mahadu Nago Chaudhari (deceased),
Through LR's
Anil Mahadu Chaudhari,
Age : 46 years, Occ. : Service,
R/o. : Kusumba, Tq. and Dist. Dhule

... APPELLANTS
(Ori. Plaintiffs)

VERSUS

1. Chandrakant Mahadu Chaudhari,
Age : 50 years, Occ. : Agriculture & Business,
R/o. : Kusumba, Tq. and Dist. Dhule,
2. Ravindra Mahadu Chaudhari,
Age : 55 years, Occ. : Agriculture & Business,
R/o. : Kusumba, Tq. and Dist. Dhule,
3. Suresh Mahadu Chaudhari,
Age : 53 years, Occ. : Agriculture & Business,
R/o. : Kusumba, Tq. and Dist. Dhule,
4. Anjanabai Madhukar Chaudhari,
Age : 57 years, Occ. : Agriculture & Business,
R/o. : Kusumba, Tq. and Dist. Dhule,
5. Lilabai Uttam Chaudhari,

Age : 59 years, Occ. : Agriculture & Busi.

R/o. : Kusumba, Tq. and Dist. Dhule,

... RESPONDENTS

(Ori. Defendants)

WITH

**APPEAL FROM ORDER NO. 69 OF 2023
WITH CA/14627/2023 IN AO/69/2023**

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(Ori. Defendants)

...
Mr. V.D. Hon, Senior Advocate h/f. Mr. A.V. Hon – Advocate for Appellants

Mr. Abhijit Chaudhari – Advocate for Respondent No.1

Mr. A.S. Bajaj – Advocate for Respondent Nos.2 to 5

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CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 21st February, 2024
PRONOUNCED ON : 22nd February, 2024

JUDGMENT :

1. The present appellants who are the original plaintiffs in Regular Civil Suit No. 445 of 2012 have challenged the common judgment and order dated 21.11.2023 passed by the learned District Judge at Dhule i.e. learned First Appellate Court in Regular Civil Appeal No.69 of 2022 filed by present respondent Nos.2, 3 and 5 and Regular Civil Appeal No.68 of 2022 filed by present respondent No.1. Under the aforesaid judgment and order dated 21.11.2023 the learned First Appellate Court has set aside the judgment and decree dated 21.03.2022 passed by the Joint Civil Judge (Senior Division) at Dhule i.e. learned Trial Court in Regular Civil Suit No.445 of 2012 and the matter is remanded back by allowing present respondent Nos.2 to 5 in both the appeals

to lead their evidence. The learned First Appellate Court has also directed to learned Trial Court to give independent findings on all the issues more particularly on issue Nos.6 to 9 except the preliminary issue regarding the maintainability of the suit before the Civil Court. The said civil suit is also made time bound by the learned First Appellate Court.

2. Background facts of the case are as under :

The present appellants had filed suit for declaration of mutation entry No.3042 being illegal and for perpetual injunction initially against present respondent No.1 – Chandrakant Mahadu Chaudhari. However, during the pendency original plaintiff – MahaduNago Chaudhari died and the present appellant No.2 was on record as his legal representative. Thereafter, in view of the order passed by this Court in Writ Petition No.1513 of 2013 the learned Trial Court also allowed the present respondent Nos.2 to 5 to be impleaded as defendant Nos.2 to 5 in the said suit. Thereafter defendant Nos.2 to 5 had also filed their written statement. However, the learned Trial Court decided the suit and decreed the same by cancelling mutation entry No.3042 and granting perpetual injunction against defendant No.1 i.e. respondent No.1

for not to cause any sort of obstruction or interference to the present appellant No.1 – Institution. The said judgment and decreed was challenged by the present respondents by filing two appeals separately and the learned First Appellate Court by allowing those appeals remanded the Regular Civil Suit No.445 of 2012 back to the learned Trial Court for deciding it afresh by giving opportunity to present respondent Nos.2 to 5 to lead their evidence.

3. Learned Senior Counsel for the appellants vehemently argued that, sufficient opportunity for leading evidence to present respondent Nos.2 to 5 was already granted by the learned Trial Court but, they failed to lead the evidence. He pointed out that, as to how the learned Trial Court correctly appreciated the evidence on record and cancel the mutation entry No.3042 by restraining present respondent No.1 from obstructing possession of the appellant No.1 over the suit premises. According to him, the learned Trial Court rightly observed that, issue Nos.6 to 9 which were framed on the basis of pleadings of present respondent Nos.2 to 5 did not survive as they did not raise any objection as regards the partition of the suit property being the legal representatives of

original plaintiff No.2 – Mahadu. He relied on the following judgments :

(a) This Court in the case of ***Barku Pundlik Patil (since Deceased) through LRs Chandrakalabai Barku Patil and Others Vs. Subhash Govindrao Pagare and Others*** in Appeal from Order No.35 of 2022

(b) Hon'ble Supreme Court in the case of ***Syeda Rahimunnisa Vs. Malan Bi (Dead) by legal representatives and Another*** in Civil Appeal Nos.2875-79 of 2010 reported in (2016) 10 SCC 315

4. On the contrary, learned Counsel for respondent Nos.2 to 5 strongly opposed the submissions made on behalf of the present appellants. He claimed that, according to respondent Nos.2 to 5 the suit property was not personal property of Mahadu and being the legal representatives of deceased – Mahadu i.e. original plaintiff No.2, they are also having right in the suit property. He pointed out that, the present respondent Nos.2 to 5 have also disputed the claim of present appellant No.2 – Anil based on the alleged will executed in his favour. He pointed out that, the present dispute is only in respect of order of remand and allowing the present respondent Nos.2 to 5 to lead their evidence and therefore, there is no question of arguing the matter on merit. By order of remand the learned First Appellate Court has not decided the rights of parties

finally and therefore he supported the impugned order and prayed for dismissal of the appeals. Learned Counsel for respondent No.1 also supported the impugned judgment.

5. Heard rival submissions and also perused the documents on record. Admittedly, the claim of appellant No.2 in the Regular Civil Suit No.445 of 2012 is for cancellation of mutation entry No.3042 whereby the present respondent No.1 had got certain right in the suit property. Further, it was also alleged by the original plaintiff No.2 – Mahadu that, respondent No.2 on the basis of said illegal mutation entry was obstructing the day to day affairs of present appellant No.1 – Institution of which Mahadu was President. It appears that, after death of Mahadu the present appellant No.2 was allowed to contest the suit being the elected President of appellant No.1 – Institution. The learned Trial Court had not allowed him to contest the suit as the legal representatives of original plaintiff No.2 – Mahadu. Thus, Anil had challenged his rejection to contest the suit being legal representatives of Mahadu before this Court by filing Writ Petition No.1513 of 2013. It is extremely important to note that, while allowing present appellant No.2 – Anil to represent Mahadu in the suit being one of the legal

representatives of Mahadu, this Court had also observed that, Mahadu was having other legal representatives besides Anil, who were claiming rights of trustee of appellant No.1 – Institution at the relevant time. It has been clearly observed by this Court that, the status of other legal representatives namely present respondent Nos.2 to 5 is equivalent to as that of Anil. It is further observed by this Court the rights claimed by the present respondent Nos.2 to 5 as well as Anil being the legal representatives of deceased Mahadu, can be decided after taking evidence. It was also found by this Court that, implementation of present respondent Nos.2 to 5 was necessary for just decision of the suit.

6. Further, it is also important to note that, when respondent Nos.2 to 5 contested the suit of present appellants, issue Nos.6 to 9 were also framed on the basis of their pleadings, but the learned Trial Court only decided the issues on the pleadings of appellants – plaintiffs and declined to give any findings on the issues of present respondents. Learned Senior Counsel for present appellants though relied on the judgments as mentioned above but after going through those judgments it appears that, the order of remand can be passed by the learned First Appellate Court, if it is found that

the defendants were denied opportunity of leading evidence and in the Appeal Memo specific ground to that effect is raised. The impugned judgment and order definitely indicates that, defendant Nos.2 to 5 had in fact sought adjournment for leading evidence by filing the application but it appears that, their application was rejected on 21.03.2022 and on the same day the judgment was delivered without giving them an opportunity to challenge the order rejecting their prayer of leading evidence. This Court has already opined that, rights of litigating parties are required to be adjudicated finally by giving fair and reasonable opportunity and, therefore, the act of learned Trial Court of rejecting the application of respondent Nos.2 to 5 for setting aside order of closure of evidence definitely appears harsh.

7. Thus, there appears no perversity in the impugned judgment of the learned First Appellate Court of remanding the matter back to the learned Trial Court after setting aside the judgment and decree in Regular Civil Suit No.445 of 2012 specially by giving opportunity to present respondent Nos.2 to 5 for leading their evidence on record. It is also settled position that, the Trial Court needs to pass judgment on all the issues but here in this case the

learned Trial Court did not give any finding on issue Nos.6 to 9 based on the pleadings of respondent Nos.2 to 5. Therefore, direction of learned First Appellate Court to the Trial Court for giving independent findings on all the issues specially on issue Nos. 6 to 9 appears proper in nature. As such, considering all these aspects no substance is found in the present appeals and accordingly, both the appeals stand dismissed.

8. Both the Appeals from Order are accordingly disposed of alongwith pending Civil Application Nos.14624 and 14627 of 2023.

[SANDIPKUMAR C. MORE]
JUDGE