

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2399 OF 2019

Anant Vasudev Limaye

..... Petitioner

VERSUS

Audyogik Nidhi Paisa Fund,

Thru Trustees

Krishnarao Dhondiba Bhegade & Ors.

..... Respondents

Mr.G.S.Godbole, Senior Advocate a/w. Mr.Atharva Dandekar for
the Petitioner.

Mr.Ketan Joshi for the Respondent Nos. 1, 2, 5 to 7.

CORAM: RAJESH S. PATIL, J.

DATE : 22 MARCH, 2024

P.C. :-

Both the learned counsel have tendered the minutes of the
order dated 22 March, 2024. They submit that the said Minutes
of the Order is signed by them on behalf of their clients.

2. The said minutes of the order dated 22 March, 2024 is
taken on record. The same reads as under :-

MINUTES OF ORDER

1. Rule. By consent of Petitioner and Respondent
No.1 to 8, Rule made returnable forthwith. None

appears for Respondent No.9 though duly served. Since as per the Written Statement filed by Respondents No. 1 to 8 and 10, the Respondent No. 10 was an employee of Respondent No. 1 Trust, service of Rule on Respondent No. 10 is dispensed with.

2. The Petition takes exception to the Order dated 16th August, 2018 passed by the Ld. District Judge- 18, Pune in Regular Civil Appeal No. 514 of 2016. By that Order, the Ld. District Judge allowed the Appeal and set aside the Trial Court's Judgment and Decree dated 5th March, 2016, passed in Regular Civil Suit No. 394 of 20 12. The Ld. District Judge allowed the applications at Exhibit 22 and Exhibit 23 filed in the Appeal as also production of the documents produced along with List at Exhibit 28 in the Appeal. The matter is remitted to the Trial Court with a direction to frame necessary additional issues as mentioned in the judgment and liberty is given to the parties to adduce evidence, if they so desire.

3. The Petitioner has given consent for allowing the following application filed by Respondents No. 1 to 8 in Regular Civil Appeal No. 514 of 2016 in the District Court at Pune. Consequently, Application at Exh. 22 for adding grounds of Appeal and Exh. 23 filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for production of additional evidence are allowed and Respondents No. 1 to 8 are allowed to produce additional documents filed with the list at Exh. 28

as well as Affidavit filed by the Petitioner dated 26th April, 2018 in E.P No. 28 of 2017. The question as to whether the Judgments and Decrees in the Earlier RCS No. 2124 of 1980, RCA No. 402 of 1986 and Writ Petition No. 142 o 1990 would operate as res judicata is kept open.

4. According to Respondents No. 1 to 8 the Petitioner has received possession of other premises via decree in Regular Civil Suit No. 3 14 of 2012 upheld in Regular Civil Appeal No. 429 of 2017. The Petitioner consents to production of the Judgments and Decrees in Regular Civil Suit No. 314 of 2012 and Regular Civil Appeal No. 429 of 2017. The same may be exhibited, without leading evidence, by consent of parties. The question as to whether these documents have any bearing on the merits of the present Suit including on the issue of bona fide requirement is kept open.

5. The Impugned Judgment and Order is set aside and the Appeal is restored to file. In addition to the various issues framed and decided by the Trial Court, the Appellate Court shall frame the following additional issues a s under:

1) Whether the Judgment and Decree in earlier RCS No. 2124 of 1980 operates a s res judicata?

2) Whether the description of the Suit

Property is incorrect?

3) Whether Defendants No. 1 to 8 prove that the fact there is splitting of tenancy or tenanted premises and what is the effect thereof?

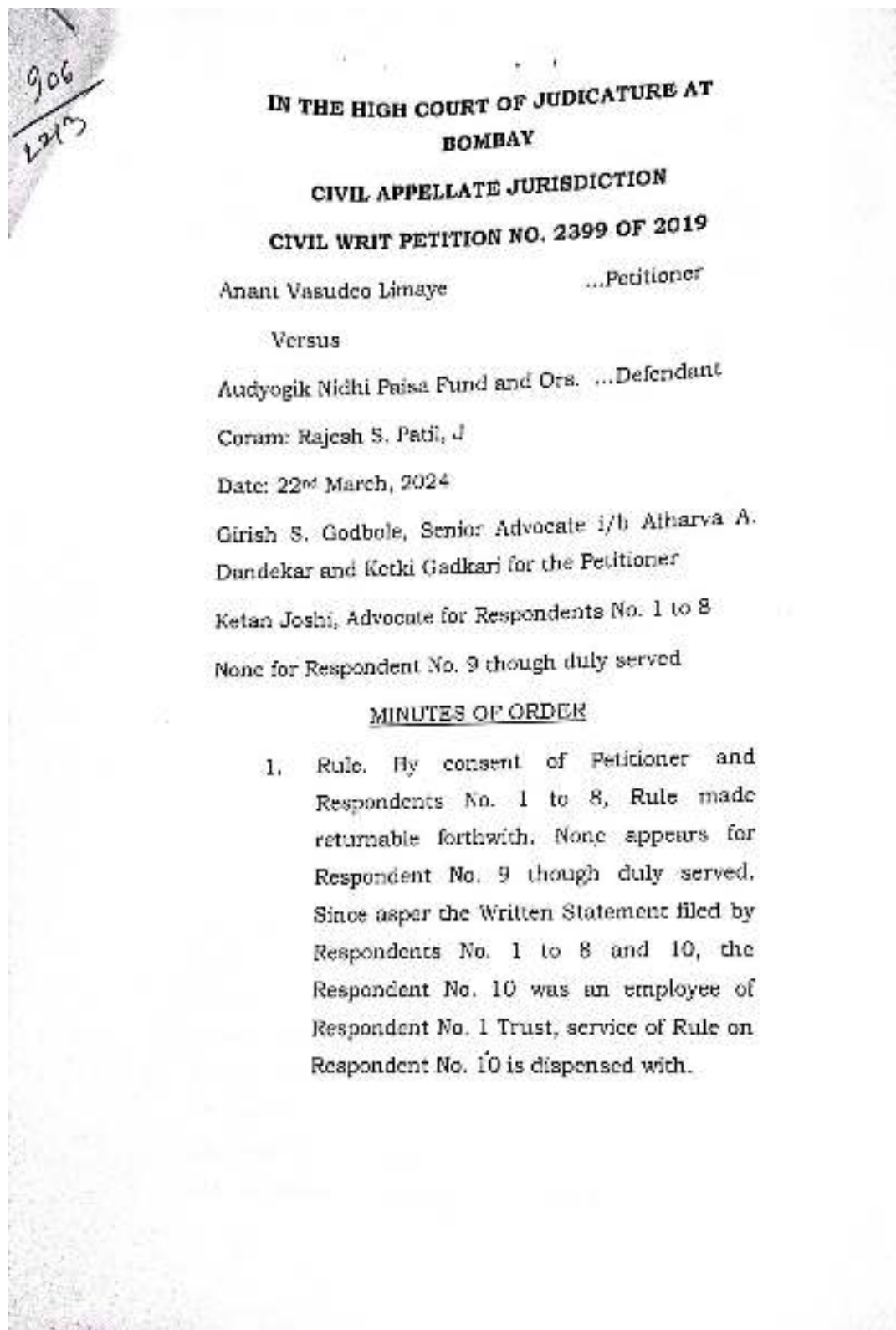
4) Whether the facts relating to earlier RCS No. 2124 of 1980 are material whether the Plaintiff is guilty of suppression of the said facts?

6. Since the Petitioner/ Plaintiff has agreed that all the documents sought to be produced by Respondent No. 1 to 8 herein (being Appellants in the District Court) can be read in evidence, the Ld. Judge of the District Court shall decide the said four additional issues also without there being any requirement of any further evidence.

7. In view of the Impugned Order being set aside, the interim order in Appeal granting stay to the execution of the decree of the Trial Court shall stand revived. However, as appeal is directed to be expedited, the order for payment of interim compensation shall not stand revived. Any amounts deposited by Respondents No. 1 to 8 towards compensation shall not be withdrawn, until disposal of the Appeal.

8. Since the Petitioner is a senior citizen aged 84 years and the Suit is of the year 2012, the District Court is directed to decide the Appeal on or before 31st July, 2024. Contention of the parties are kept open.

3. For ease of reference, a scanned copy of the minutes of the order dated 22 March, 2024 is reproduced hereinbelow :-



2. The Petition takes exception to the Order dated 16th August, 2018 passed by the Ld. District Judge-18, Pune in Regular Civil Appeal No. 514 of 2016. By that Order, the Ld. District Judge allowed the Appeal and set aside the Trial Court's Judgment and Decree dated 5th March, 2016, passed in Regular Civil Suit No. 394 of 2012. The Ld. District Judge allowed the applications at Exhibit 22 and Exhibit 23 filed in the Appeal as also production of the documents produced along with List at Exhibit 28 in the Appeal. The matter is remitted to the Trial Court with a direction to frame necessary additional issues as mentioned in the judgment and liberty is given to the parties to adduce evidence, if they so desire.
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allowed and Respondents No. 1 to 8 are allowed to produce additional documents filed with the list at Exh. 28 as well as Affidavit filed by the Petitioner dated 26th April, 2018 in E.P. No. 28 of 2017. The question as to whether the Judgments and Decrees in the Earlier RCS No. 2124 of 1980, RCA No. 402 of 1986 and Writ Petition No. 142 of 1990 would operate as res judicata is kept open.

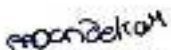
4. According to Respondents No. 1 to 8 the Petitioner has received possession of other premises via decree in Regular Civil Suit No. 314 of 2012 upheld in Regular Civil Appeal No. 429 of 2017. The Petitioner consents to production of the Judgments and Decrees in Regular Civil Suit No. 314 of 2012 and Regular Civil Appeal No. 429 of 2017. The same may be exhibited, without leading evidence, by consent of parties. The question as to whether these documents have any bearing on the merits of the present Suit including on the issue of bona fide requirement is kept open.
5. The Impugned Judgment and Order is set aside and the Appeal is restored to file. In

addition to the various issues framed and decided by the Trial Court, the Appellate Court shall frame the following additional issues as under:

- 1) Whether the Judgment and Decree in earlier RCS No. 2124 of 1980 operates as *res judicata*?
 - 2) Whether the description of the Suit Property is incorrect?
 - 3) Whether Defendants No. 1 to 8 prove that the fact there is splitting of tenancy or tenanted premises and what is the effect thereof?
 - 4) Whether the facts relating to earlier RCS No. 2124 of 1980 are material whether the Plaintiff is guilty of suppression of the said facts?
5. Since the Petitioner/Plaintiff has agreed that all the documents sought to be produced by Respondent No. 1 to 8 herein (being Appellants in the District Court) can be read in evidence, the Ld. Judge of the District Court shall decide the said four additional issues also without there being any requirement of any further evidence.

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8. Since the Petitioner is a senior citizen aged 84 years and the Suit is of the year 2012, the District Court is directed to decide the Appeal on or before 31st July, 2024. Contention of the parties are kept open.

Dated this 22nd Day of March, 2024


Atharva A. Dandekar


Ketan Joshi

Advocate for the Petitioner Advocate for R. No. 1 to 8

4. Order in terms of the Minutes of the Order.
5. All statements are accepted as an undertakings to this Court and all undertakings are also accepted.
6. Writ petition is disposed of in terms of the minutes of the order.

[RAJESH S. PATIL, J.]