

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 70 OF 2023

Shri. Vilas Anant Bane

...Appellant

V/s.

Smt. Mangal Ramchandra Yadav

and Ors.

....Respondents

Mr.Kamlakar Laxman Koli, *for the Appellant.*

Mr.Prasad Avhad *a/w. Mr. Chetan Nagave, for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 13 February 2024.

P.C. :

1. By this Appeal, the Appellant challenges Judgment and Decree dated 14 October 2022 passed by the District Judge, Satara in Regular Civil Appeal No. 17 of 2020. The first Appellate Court has dismissed the Appeal preferred by the Appellant and has confirmed the Decree dated 14 February 2018 passed by the Civil Judge Junior Division, Khandala, District-Satara in Regular Civil Suit No.161 of 2013.

2. It appears that Regular Civil Suit No. 161 of 2013 was decreed by the Trial Court *ex-parte* on account of non-appearance by

any of the Defendants before it. Plaintiffs had impleaded five Defendants to the suit and none appeared before the Trial Court. It appears that the Appellant herein was impleaded as Defendant No.5 to the suit, who has purchased the suit property through Defendant No.4- Shobha Laxman Konde, who in turn purchased the same through Defendant Nos.1 to 3. Plaintiffs claimed the suit property to be ancestral property and questioned the rights of Defendant Nos.1 to 3 to sell the same to Defendant No.4. Accordingly, Plaintiffs have set up a challenge to the sale-deeds dated 1 March 2011 and 21 July 2011 executed by Defendant Nos.1 to 3 in favour of Defendant No.4. They also challenged the sale-deed dated 12 July 2012 executed by Defendant No.4 in favour of Defendant No.5 (Appellant).

3. The Appellant claims that he was never served with the suit summons. I have perused the bailiff report dated 3 December 2013 which indicates that the bailiff approached the residence of the Appellant/Defendant No.5 on 3 December 2013 and met his wife. The wife of Defendant No.5 informed the bailiff that Defendant No.5 had gone out of Mumbai (at Delhi) and did not mention the exact date on which he was likely to return. This is all that the bailiff report dated 3 December 2013 records. In my view, the bailiff ought to have served the suit summons on the wife of Defendant No.5 under the provisions of Order 5 Rule 15 of the Code of Civil Procedure. The bailiff however violated the procedure and did not serve the suit summons on the wife of Defendant No.5. The report does not indicate that the bailiff made any attempt to serve the suit summons on the wife of Defendant No.5.

Therefore, the question of refusal to accept the summons did not arise. The conclusion drawn by the first Appellate Court about knowledge derived by Defendant No.5 about the summons is therefore totally unsustainable. Even if the provisions of Order 5 Rule 17 are taken into consideration and even if it is to be assumed that there was refusal on the part of the wife of the 5th Defendant to accept the suit summons, it was incumbent for the bailiff to affix the copy of the summons on the outdoor or on conspicuous part of residence of Defendant No.5. This procedure is also not followed by the bailiff. I am therefore convinced that proper service of suit summons is not effected on Defendant No.5. The same has vitiated the entire trial. The conduct of Court Bailiff in not following the procedure prescribed in Rule 15 or Rule 17 of Order 5 of the Code is not appreciated.

4. The learned counsel appearing for Respondent Nos.1 to 4 (Original Plaintiffs) would fairly submit that instead of admitting the Appeal and keeping it pending, the suit be remanded for being tried afresh after grant of opportunity to Defendant No.5 to file Written Statement. In my view, the suggestion given by the Original Plaintiffs is fair. The learned counsel for the Appellants is also agreeable to this course of action. In view of the agreements prevailing between the learned counsel for the parties, the following order is passed :

(i) The Judgment and Order dated 14 October 2022 passed by by the District Judge, Satara in Regular Civil Appeal No. 17 of 2020 as well as the Judgment and Decree dated 14 February

2018 passed by the Civil Judge Junior Division, Khandala, District-Satara in Regular Civil Suit No.161 of 2013 are set aside.

(ii) Regular Civil Suit No. 161 of 2013 is restored on the file of Civil Judge Junior Division, Khandala for being decided afresh.

(iii) Plaintiffs and Defendant No.5 (Appellant) shall appear before the Trial Court on 1 March 2024 and obtain further directions.

(iv) Defendant No.5 shall file Written Statement before 31 March 2024.

(v) Considering the fact that the suit is pending since the year 2013, the Trial Court shall expedite the trial thereof and shall make an endeavour to decide the same as expeditiously as possible, preferably within a period of one month from today.

5. With the above directions, the Second Appeal is allowed and **disposed of**.

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SANDEEP V. MARNE, J.