



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 21 OF 2022 WITH
CIVIL APPLICATION NO. 573 OF 2022
IN SA/21/2022

Ashruba Tatya Chigure
(Deceased through LRs) & othersAppellants

VERSUS

Manojkumar DuggadRespondent

Mr. A. V. Patil Indrale, Advocate for Appellants.
Mr. H. V. Tungar, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.
DATE : 6th AUGUST, 2025.

PER COURT :

1. This Court has framed following substantial question of law :-

Whether the suit filed by the plaintiff/respondent was barred by Order 26 Rule 1 of the Code of Civil Procedure in view of unconditional withdrawal of Regular Civil Suit No. 89 of 2016 ?

2. Heard learned counsel for both sides.

3. Perusal of written statement indicates that a specific plea was raised by the Defendants in respect of maintainability of the suit

in view of bar created by Order 23 Rule 1 of Code of Civil Procedure. Record indicates that inspite of such plea being raised, no issue was framed by the Trial Court and the Trial Court proceeded to decide the suit without recording any findings on the plea taken by the Defendants. As the written statement raises issue of maintainability of suit on this ground, non framing of issue and its determination becomes a substantial question of law.

4. In view of the aforestated undisputed fact, the substantial question of law deserves to be answered and accordingly answered in affirmative. The impugned judgment and decree passed by the Trial Court and affirmed by First Appellate Court deserve interference.

5. At this stage, learned counsel for both sides, on instructions, seek setting aside of the entire order passed by the Trial Court as well as the First Appellate Court and to relegate Regular Civil Suit No. 54/2007 back to the Trial Court for decision afresh.

6. In view of this request and as the substantial question of law is answered in affirmative, the impugned orders are set aside.

Proceedings of Regular Civil Suit No. 54/2007 are relegated back to the Trial Court for decision afresh. Trial Court to frame issue in respect of maintainability of the suit in view of bar created by Order 23 Rule 4 of Code of Civil Procedure. Trial Court to permit the parties to lead evidence only in respect of this issue. It is not open for the Trial Court to permit the parties to lead evidence in respect of other issues which are already determined.

7. Appeal stands allowed in above terms.

(R. M. JOSHI)
Judge

dyb