



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

APPEAL FROM ORDER NO.36/2023

Raghunath Shalikram Amale (Dead) thr. LRs. And Ors. Vs. Kalawantibai Gunwantrao
Agale (Dead) thr. LRs. And Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. U. J. Deshpande, Advocate for appellants.
Mr. R. M. Pande, Advocate for respondents.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 25, 2025

On 04.02.2025, following order passed.

“Heard for some time.

2] One of the issues is as regards admissibility of relinquishment deed dated 23/1/1991. The trial Court found it to be inadmissible because it was not registered. The First Appellate Court referred to evidence of DW – 3, whose evidence was tendered to prove the contents of the relinquishment deed. During the course of further chief examination, the appellant – plaintiff raised an objection about admissibility of document on the ground that it is not registered. The learned Counsel for the respondents – defendants argued that it could be read for collateral purpose in terms of Section 49 of the Registration Act, 1908. The objection, however, was not decided by the trial Court and the matter was adjourned.

3] The learned Counsel for the appellant submits that to the best of his knowledge, DW – 3 did not appear thereafter and failed to subject himself to cross-examination and, therefore, the trial Court discarded his evidence. In the circumstances, there would arise no question of deciding the objection put up by the appellant.

4] In any case, the learned Counsel for the appellant submits that since the entire evidence was available, the Appellate Court ought to have decided the appeal on merits in terms of Order 41 Rule XXIV of the Code of Civil Procedure, 1908.

5] Accordingly, in addition to substantial question of law formulated on 7/10/2024, the following substantial question of law is formulated :

“Whether the First Appellate Court failed to exercise jurisdiction under Order 41 Rule XXIV of the Code of Civil Procedure, 1908 ?”

6] List in the week commencing from 24/2/2025.

2. During the course of hearing, I am informed that the Trial Court has, pursuant to the judgment passed by the Appellate Court remanding the matter back, decided the objection raised by the petitioner – plaintiff regarding admissibility of relinquishment deed and held that it will be admissible for collateral purpose. Thus, the impugned judgment dated 10.01.2023 has been already acted upon by the Trial Court. What is now remaining is to render a fresh finding on all the issues.

3. That being so, no fruitful purpose will be served even if the substantial questions of law, as formulated, are answered in the affirmative. As such, the first substantial question of law relates to remanding the matter back without order of the Trial Court having been set aside. However, in the present case, the aspect of setting aside the order of Trial Court could be gathered impliedly though not expressly stated by the First Appellate Court.

4. The purpose of remanding the matter back for decision afresh on merits is to have finding on all issues after considering the oral as well as documentary evidence, which the parties intend to rely upon. In that view of the matter, fresh finding on merit can only be rendered upon setting aside the judgment and decree passed by the Trial Court. Even otherwise, it will be in the interest of the parties to have a finding on merit on all the issues after giving consideration to the entire evidence placed before the Trial Court.

5. In view of above, I would refrain from interfering with the impugned judgment passed by the First Appellate Court remanding the matter back to the Trial Court for decision afresh. The appeal is accordingly dismissed. No order as to costs.

(Anil L. Pansare, J.)

Kahale