



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

APPEAL AGAINST ORDER NO.02 OF 2022

Sukhdeo Pandurang Lokhande,
Aged 45 years, Occu: Cultivation,
R/o Sindewahi, Tah. Sindewahi,
Dist. Chandrapur.

...APPELLANT
(Ori. Plaintiff on RA)

...V E R S U S...

1. Smt. Maya Vasantao Panchalwar,
Aged 44 years, Occu: Nil
2. Prakash Vasantao Panchalwar
Aged 24 years, Occu: Not mentioned
3. Pravin Vasantao Panchalwar
Aged 19 years, Occu: Not mentioned
4. Sangita Vasantao Panchalwar
Aged 22 years, Occ: Not mentioned.
All R/o Niphandra, Tah. Saoli,
Dist. Chandrapur.
5. Jaganath Ramchandra Panchalwar
(dead)

...RESPONDENTS
(Ori. Def. on RA)

Shri Anil Dhawas, Advocate for appellant.
Shri Apurv De, Advocate for respondents.

CORAM:- M.W. CHANDWANI, J.
DATED :- 11.08.2025

ORAL JUDGMENT:

1. Heard. **Admit.**
2. This is an appeal against the judgment and order dated 04.09.2024 passed by the District Judge-1, Chandrapur, whereby

the learned Judge set aside the order dated 19.09.2013 passed by the learned Civil Judge Junior Division, Savali, District Chandrapur in Regular Civil Suit No.2/2012 and remanded the matter to the trial Court to determine the suit afresh on merits after recording the evidence.

3. It is not necessary to go into the factual matrix of the case in detail. Suffice to say that the appellant (original plaintiff) has filed a suit for specific performance of contract on the basis of an agreement dated 08.03.2000 in respect of the suit property. The suit came to be decreed by the trial Court. The first appellate Court found that the respondents (original defendants) did not cross-examine the appellant and therefore, remanded the matter to the trial Court for deciding it afresh by giving an opportunity to the respondents herein to cross-examine the appellant. Feeling aggrieved with the order of remand, this appeal against order came to be filed.

4. Mr. Dhawas, learned counsel appearing for the appellant vehemently submits that the respondents appeared through their counsel and in spite of the fact that the affidavit of evidence of the appellant was filed on record, the respondents failed to cross-examine him. The learned counsel for the

respondents cross-examined the other witnesses and was aware of the fact that he did not raise any ground before the trial Court. The first appellate Court ignored all these aspects and gave a chance to the respondents to cross-examine the appellant by remanding the matter. Therefore, the respondents themselves waived the right of cross-examination of the appellant and as such they are not entitled to cross-examine the appellant at a belated stage. Therefore, according to him, the judgment and order passed by the first appellate Court does not sustain and is liable to be set aside.

5. Mr. De, learned counsel appearing for the respondents submitted that the appellant herein did not supply the copy of the affidavit of examination-in-chief upon the respondents and therefore, the appellant could not be cross-examined. According to him, it was the duty of the appellant to supply the copy of the affidavit of examination-in-chief to respondent no.1, which he failed to do. He supported the judgment and decree of the first appellate Court.

6. Having heard the learned counsels appearing for the respective parties and having gone through the impugned judgment, it is revealed that the first appellate Court relied on

Order XVIII, Rule 4 of the Code of Civil Procedure (for short “CPC”) which mandates supplying of copy of the affidavit of examination-in-chief to the other side. Admittedly, the copy of the affidavit of examination-in-chief of the appellant was not supplied to the respondents; however, it was filed on record.

7. Considering the mandate of Order XVIII, Rule 4 of the CPC with regard to supplying of copy to the other side, in my view, the first appellate Court has rightly held that the matter is required to be remanded for giving an opportunity to the respondents to cross-examine the appellant. More particularly, when the suit came to be decreed on the basis of the unchallenged version of the appellant. Therefore, the first appellate Court was right in remanding the matter to the trial Court.

8. I find substance in the argument of learned counsel for the appellant that the respondents herein could have raised this point before the trial Court. Since, the appellate Court has exercised its jurisdiction in wake of Order XVIII, Rule 4 of the CPC this will not help the appellant to succeed in this appeal. However, had the respondents herein pointed this fact out to the trial Court or would have applied for getting an opportunity to cross-examine the appellant, the trial Court might have allowed them to cross-

examine the appellant. But this was not done and the matter went in appeal and ultimately, it was remanded back. Certainly, a case for imposition of costs on the respondents is made out.

9. It is also submitted by the learned counsel for the appellant that the first appellate Court has remanded the matter for deciding it afresh, which means a fresh trial will be conducted. However, the appellate Court, in clause 3 of the operative part of the judgment has directed the trial Court to consider the evidence recorded during the original trial and decide the suit afresh on the merits, in view of findings recorded by the appellate Court. Though not in explicit terms, but the first appellate Court observed that the findings of the trial Court cannot sustain for want of cross-examination of the appellant by the respondents due to non-compliance of Order XVIII Rule 4 of the CPC which itself is indicative of the fact that the matter is remanded back for recording the cross-examination of the appellant (PW1). Therefore, it is hereby clarified that the suit is directed to be decided after giving the chance to the respondents for cross-examination of the appellant (PW1). The trial Court after considering the material in cross-examination of the appellant (PW1) shall decide the suit afresh.

10. With the aforesaid terms, the appeal is disposed of. The respondents shall pay the costs of ₹11,000/- (Rs. Eleven Thousand only) to Gondia Bar Association, Gondia.

JUDGE

Wagh