



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

88 APEAL FROM ORDER NO. 36 OF 2024
WITH
CIVIL APPLICATION NO. 11246 OF 2024
IN AO/36/2024

SMT. SUSHILABAI SHRAWAN BHAMRE (DIED) THRU LRS. ANIL S.
BHAMRE THRU. LRS. MANGALA A. BHAMRE AND ORS

VERSUS

SUNIL KAMALAKAR PATIL AND OTHERS

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Advocate for the Petitioner : Mr. S.B. Yawalkar h/f Mr. Sawant Amol
Shivajirao

Advocate for Respondent No. 1 : Mr. M.S.Shah

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ORAM : SHAILESH P. BRAHME, J.

DATE : 10.02.2026

PER COURT :

Heard both sides finally at the stage of admission.

2. Appeal is directed against judgment and order dated 15.04.2024 passed in Regular Civil Appeal No. 70/2015 remanding the matter to the trial court. The appellant is original defendant no. 1 and respondent no. 1 is original plaintiff in Regular Civil Suit No. 297/2004 filed for mandatory injunction.

3. In pursuance of the substantial questions of law framed by this Court, both counsels advanced their arguments.

4. Learned counsel Mr. Yawalkar submits that impugned order is perverse because deceased Sushilabai was defendant no. 1 and she had filed written statement and adduced evidence and which is binding on her heirs. Impugned order is unsustainable because lower Appellate Court should

have decided the matter on merits. It is further submitted that respondent no. 1 had filed suit with the pleading that agreement dated 04.09.2003 was executed by the appellant. My attention is adverted to the findings recorded by the Trial Court for issue nos. 3 and 4 to buttress that the persons interested in the subject matter were not impleaded as a party. It is further submitted that order of remand amounts to reopening of the matter which is impermissible.

5. Per contra, learned counsel Mr. Shah repeals the submissions and submits that the appellant and her heirs were the owners of the suit land. By sale-deed dated 31.01.1997 it was sold to Mr. Bhushan Joshi. The agreement, which is at Exh. 51 is discarded solely on the ground that other interested persons were not made party to the suit. It is submitted that no issue for non-joinder of necessary parties was framed by the trial court and on that count also matter needs to be addressed afresh. He would further submit that appellate Court has taken into account all the necessary circumstances and then thought it fit to remand the matter which cannot be faulted.

6. I have considered rival submissions of the parties. Regular Civil Suit No. 297/2004 was filed for mandatory injunction by respondent no. 1. The controversy pertains to shop No. U-5 which is part and parcel of the pleadings of the suit property. The original defendant nos. 2 and 3 were deleted. The claim is founded on the agreement dated 04.09.2003 at Exh. 51, executed by appellant and her heirs. The trial Court dismissed the suit holding that agreement Exh. 51 was not proved. The heirs of deceased appellant were co-owners and they were not impleaded in the suit.

7. Impugned judgment reveals that the appellate Court considered agreement Exh. 51, which was executed by seven persons. The suit was filed against appellant only and it was dismissed for non-joinder of necessary parties. Following findings are recorded in para no. 25 :

“25. However, it is to be noted that after said judgment & decree this appeal is presented on 08.06.2015 then Exh. 29 (application) was moved by LR of defendant no. 1 for impleading them as LR of respondent no. 1 Sushilabai. Said application is allowed by this Court on 17.03.2022. Appeal is nothing but continuation of the suit. It means when LR of Sushilabai came to be added as party in this appeal, they are no more third party in respect of this litigation.”

8. Appellant-deceased Sushilabai was party to the suit. She had filed written statement contesting the claim of the plaintiff. She had even adduced her evidence and evidence of her son Vijay Shravan Bhamre. Heirs of the appellant are bound by the defence taken by deceased Sushilabai and evidence adduced by her. It is totally sustainable that heirs of the deceased party would have any independent right to contest the claim afresh. If this course is adopted, no litigation would arrive at finality. I am of the considered view that findings recorded by the Appellate Court for remanding the matter is perverse and against settled legal position of law.

9. Parties have adduced evidence before the Trial Court and the Appellate Court was having relevant record. No case is made out by either of the parties that opportunity of hearing was not given or either of them are armed with additional evidence which could not be produced before the Court. The order of remand is in utter disregard to law laid down in the matter of **Shivkumar and others Vs. Sharan Basappa (2021) 11 SCC 277**.

10. I find that interference is called for in the present matter. The substantial questions of law need to be answered in favour of the appellant. I, therefore, pass following order.

ORDER

(I) Appeal from Order is allowed.

(II) Impugned judgment and order passed in Regular Civil Appeal

No.70/2015 is quashed and set aside. The parties shall appear before the lower Appellate Court on 23.02.2026. The lower Appellate Court shall decide the matter on its own merits, expeditiously.

(III) Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)

mkd/-