

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 229 OF 2024
WITH
INTERIM APPLICATION NO. 6796 OF 2024

Shivaji Gopal Kurhade]
Age: 72, Occ- Agriculturalist]
Residing at H.No.1951, Kurhade Ali]
Aalndi Devachi Tal-Khed Dist- Pune]...Appellant
(Original Plaintiff)

V/s.

1. Ramchandra Gopal Kurhade]
Age: 72, Occ- Agriculturalist]

2. Vilas Gopal Kurhade]
Age: 62, Occ- Agriculturalist]

3. Yogendra Gopal Kurhade]
Age: 56, Occ- Agriculturalist]

4. Shankarrao Gopal Kurhade]
Age: 52, Occ- Agriculturalist]

5. Vimal Gopal Kurhade]
Age: 85, Occ- Agriculturalist]

6. Sachin Ramchandra Kurhade]
Age: 38, Occ- Agriculturalist]

7. Amol Ramchandra Kurhade]
Age: 35, Occ- Agriculturalist]

8. Vishal Vilas Kurhade]
Age: 33, Occ- Agriculturalist]

9. Viraj Vilas Kurhade]
Age: 31, Occ- Agriculturalist]

10. Gopal Yogendra Kurhade]
 Age: 24, Occ- Agriculturalist]

11. Chaitanya Shankarrao Kurhade]
 Age: 22, Occ- Agriculturalist]

All R/at- House No. 808/2,]
 Laxminarayan Building, Behind]
 Santoshimata Temple Aalndi]
 Devachi Tal-Khed Dist- Pune]...Respondents
 (Original Defendants)

Dr. Abhinav Chandrachud i/by Adv. Samay Pawar for Appellant.

Mr. J.D. Khairnar a/w. Adv. Vikas Shivarkar for Respondent No. 1, 6 and 7.

Mr. Laxmikant N. Shrimangale a/w. Adv. Ambadas N. Shrimangale, Adv. Vithal Shrimangale for Respondent No. 2, 3, 8 to 10.

CORAM : KAMAL KHATA, J.
RESERVED ON : 6TH JANUARY 2026.
PRONOUNCED ON : 28TH JANUARY 2026.

JUDGMENT:

1) By the present Appeal, the Appellant/Orig. Plaintiff challenges the order dated 1st February 2024 ("impugned order"), passed by the Ad-hoc District Judge-1, Khed- Rajgurunagar, District-Pune ("the Appellate Court") in Regular Civil Appeal No. 19 of 2020 arising out of Special Civil Suit No. 211 of 2014 ("Suit"). By the impugned order, the Appellate Court set aside the partial Decree for partition dated 2nd January 2020 passed by the Joint Civil Judge, Senior Division, Khed- Rajgurunagar, Dist.-Pune ("the Trial Court"), partly in favour of the Plaintiff and remanded the

Suit to the Trial Court for fresh adjudication on re-framed issues.

2) The short but significant question that arises for consideration in the present Appeal is whether the Ld. Appellate Court was justified in remanding the Suit for fresh adjudication on re-framed issues, including an additional issue of limitation, without considering the evidence already led by the parties on record.

BRIEF FACTS

3) The Appellant had instituted Special Civil Suit No. 211 of 2014 (originally Special Civil Suit No. 248 of 2012) seeking partition and separate possession of ancestral and joint family properties described in Schedules A to E, recovery of the Appellant share in rental income from 2009 to 2012, and a decree of permanent injunction. The Appellant claims a 1/6th share in the joint family properties as the son of late Gopal Kurhade through his first wife, whereas Respondent Nos. 1 to 4 are the sons of the said deceased through Respondent No. 5, his second wife. The Suit came to be filed upon the Appellant acquiring knowledge that Respondent Nos. 1 to 4 were attempting to alienate the suit properties to his exclusion.

4) The Respondents contested the Suit, inter alia, on the ground of limitation, alleging an oral partition in 1980 during the lifetime of the deceased, and further contended that the properties

described in Schedules D and E were their self-acquired properties.

5) The Trial Court, by judgement and decree dated 2nd January 2020, partly decreed the Suit by granting the Appellant 1/6 undivided share in the properties described in Schedules 'A to C' only. The Trial Court further directed that for the purpose of partition by metes and bounds and for delivery of possession, the agricultural lands described in Schedule 'C' (of the Suit) be referred to the District Collector under Section 54 of the Code of Civil Procedure, 1908, (CPC), and that a Court Commissioner be appointed for the partition of the properties described in Schedules 'A' and 'B'.

6) Being aggrieved by the said Order dated 2nd January 2020, the Appellant preferred a Regular Civil Appeal No. 19 of 2020 before the Ld. Appellate Court. The Respondents, by filing their cross-objections, re-agitated their challenge to the partition decree by contending that the properties were not ancestral and that the Trial Court had failed to frame an issue in that regard. It was further argued that since no specific issue on limitation had been framed, the Respondents were deprived of an opportunity to lead evidence.

7) The Appellate Court by its order dated 1st February 2024 remanded the suit back to the Trial Court after framing additional issues including an issue on limitation, for fresh adjudication.

8) It is under these circumstances that the present Appeal has been preferred by the Original Plaintiff.

RIVAL SUBMISSIONS

9) Dr. Chandrachud, the learned counsel for the Appellant, submits that the Appellate Court committed a serious error in ordering a remand of the entire case under Order XLI Rule 23A of the of the CPC. He submits that if the Appellate Court was of the view that a fresh issue of limitation was required to be framed, the same ought to have been decided by the Appellate Court itself, or at the highest, the matter ought to have been remanded only for the limited purpose of adjudication of the issue of limitation under Order XLI Rule 25 CPC. The mere failure of the Trial Court to frame an issue of limitation could not justify setting aside the entire decree and directing a de novo trial.

10) The Appellant, placing reliance on *Uttara Thool v. Praveel Thool*¹; *Kunju Kesavan v. M.M. Philip*²; *Sayeda Akhtar v. Abdul Ahad*³; and *Nedunuri Kameswaramma v. Sampati Subba Rao*⁴, contends that non-framing of a specific issue does not vitiate the proceedings where the parties were fully conscious of the controversy and have already led evidence thereon, and where no prejudice is demonstrated to have been caused by such omission.

1 (2014) 2 MhLJ 321

2 AIR 1964 SC 164

3 (2003) 7 SCC 52

4 AIR 1963 SC 884

11) Learned Counsel further submits that the Appellate Court failed to apply the settled principle that remand is an exception and not the rule. Reliance is placed on *Zarif Ahmad v. Mohd. Farooq*⁵, wherein the Supreme Court held that remand ought to be ordered only in exceptional cases, such as where the suit is disposed of on a preliminary issue without recording evidence on other issues. No such circumstance existed in the present case.

12) It is also submitted that the Appellate Court overlooked the statutory scheme under Order XLI Rule 25 of the CPC, which empowers the appellate court to frame an additional issue and call for findings thereon while retaining the appeal for final disposal. Reliance is placed on *Corporation of Madras v. M. Parthasarathy*⁶.

13) Learned Counsel lastly submits that the Appellate Court failed to consider the settled law governing limitation in partition suits. Reliance is placed on *Syed Shah Ghulam v. Syed Shah Ahmed*⁷, which recognizes that the cause of action in a partition suit is perpetually recurring. Though a seemingly different view was expressed in *Krishna Pillai v. Padmanabha Pillai*⁸, the Appellate Court neither examined the recurring nature of the cause of action nor reconciled the authorities before directing remand, thereby rendering the impugned order vitiated for non-application of mind.

5 (2015) 13 SCC 673

6 (2018) 9 SCC 445

7 (1971) 1 SCC 597

8 (2004) 12 SCC 754

14) On these grounds, it is submitted that the impugned order deserves to be set aside and the Appeal from Order be remitted to the Appellate Court for Adjudication on merits.

15) Mr. Shrimangali, the learned counsel appearing on behalf of the Respondents supports the impugned order. He submits that the Suit properties mentioned in Schedules 'A to C' are ancestral properties and that the name of the Appellant as well as the Respondents are shown on 7/12 extract. He further submits that the properties described in the Schedule 'D' were purchased in the name of Defendant No.6, while those described in Schedule 'E' were purchased in the names of Defendant No. 7 to 11

16) Learned Counsel submits that the Defendants had duly appeared before the Trial Court and contested the Suit. He submits that an oral partition had already taken place between the Appellant and the Respondents in the year 1980 during the lifetime of the deceased Gopal Kurhade. Pursuant to the said oral partition, the Appellant was allegedly put in possession of his separate share and has been cultivating the same since 1980. The Respondent have also developed their respective shares after oral partition. It is therefore contended that both sides accepted and acted upon the oral partition.

17) On this basis, it is contended that the suit filed by the Appellant is clearly barred by limitation, as the cause of action, if

any, arose in 1980. The Respondents accordingly denied the Appellant's claim in its entirety and have prayed for dismissal of the suit.

18) The Respondents further contend that after filing their Written Statements and specifically objecting to the Suit on the grounds of limitation, the Appellant amended the original plaint by deleting paragraph no. 8, which according to them amounted to suppression of material facts.

19) Ld. Counsel further submits that the Appellant had earlier, in the year 1988, filed Regular Civil Suit No. 126 of 1988 seeking an injunction against his father. The said suit was subsequently withdrawn, and thereafter, no suit for partition was filed until 2012. This prolonged inaction, according to the Respondents, reinforces the plea of limitation.

20) In conclusion, learned Counsel submits that the Appellate Court has correctly identified the legal infirmities and perversity in the judgement of the Trial Court, and that the impugned order warrants no interference.

REASONS & CONCLUSION

21) I have heard the learned counsel appearing for the parties and have carefully perused the record of the Appeal.

22) Upon hearing the learned counsel and upon a careful perusal of the record, it is evident that the Trial Court had framed several

issues and adjudicated the Suit on merits after appreciating both the oral and documentary evidence led by the parties.

23) The impugned judgment of the Appellate Court does not demonstrate that the findings recorded by the Trial Court were perverse, unsupported by evidence, or otherwise unsustainable in law. The Appellate Court has not undertaken any exercise to examine the correctness of the conclusions reached by the Trial Court on the issues already framed and decided.

24) Instead, the Appellate Court has proceeded to remand the entire Suit solely on the ground that a specific issue on limitation had not been framed by the Trial Court.

25) The Respondents had pleaded an oral partition of the year 1980 and sought dismissal of the Suit on the ground of limitation. In such circumstances, the mere absence of a formally framed issue on limitation could not, by itself, render the entire trial vitiated. The Appellate Court was required to examine whether any prejudice had in fact been caused to the Respondents and whether the evidence on record was insufficient to decide the issue of limitation. No such finding has been recorded in the impugned order.

26) The power of remand under Order XLI Rule 23A of the CPC is an exceptional power and cannot be exercised mechanically. A wholesale remand is warranted only when the judgment of the

Trial Court is shown to be wholly unsustainable or where the Suit has been disposed of without recording evidence on material issues.

27) In the present case, the Trial Court had recorded evidence and rendered findings on all issues framed before it. The Appellate Court has failed to indicate as to how those findings were so perverse or contrary to the record as to necessitate a complete retrial.

28) Even assuming the Appellate Court was of the view that an issue on limitation ought to have been framed, the CPC provides specific mechanisms to address such a situation. The Appellate Court could have framed the issue and decided it itself on the basis of the evidence already on record, or could have adopted the limited course contemplated under Order XLI Rule 25 CPC.

29) The impugned order does not reflect any consideration of these statutory alternatives, nor does it disclose any reasons as to why such courses were not adopted.

30) In these circumstances, this Court is of the view that the impugned order suffers from a clear non-application of mind. The Appellate Court has failed to consider the evidence on record, has not assessed the sustainability of the Trial Court's findings, and has not recorded any cogent reasons justifying a complete remand for fresh adjudication on all issues. The approach adopted defeats

the very purpose of the Appellate scrutiny and runs contrary to the settled principle that remand is not to be ordered merely because another view is possible.

31) The scope and limits of the Appellate court's power of remand under Order XLI of the CPC have been authoritatively explained by the Supreme Court in Corporation of *Madras v. M. Parthasarathy (supra)*. The Appellate court has two distinct statutory courses available: (i) either to remand the entire matter for retrial under Order XLI Rule 23A CPC, or (ii) to adopt the narrower course under Order XLI Rule 25 CPC by framing specific issues and calling for findings, while retaining the appeal.

32) The choice between these alternatives must be guided by necessity and proportionality, keeping in mind that a complete remand is warranted only where the original trial is shown to be fundamentally defective or where the Appellate court is genuinely unable to decide the controversy on the existing record.

33) The jurisprudence on non-framing of issues is equally well settled. In *Uttara Thool v. Praveen Thool (supra)*, the Supreme Court reiterated the mandate of Section 99 CPC that no decree shall be reversed or substantially varied merely on account of any procedural defect or irregularity unless prejudice is shown.

34) The record demonstrates that the Respondents had specifically pleaded limitation founded on the alleged oral

partition. The plea of limitation was therefore very much in issue, notwithstanding the absence of a formally framed issue.

35) Despite raising such a plea, the Respondents failed to lead cogent evidence to establish a clear and unequivocal denial of the Appellant's rights, so as to attract the bar of limitation. In such circumstances, no prejudice can be said to have been caused by the omission to frame a specific issue.

36) The Appellate Court, being the final court of facts, was fully empowered to reappraise evidence and decide the controversy on merits, or at the highest, to adopt a limited remand confined to the issue of limitation.

37) Even on the substantive law of limitation in partition suits, a nuanced analysis was required. In *Syed Shah Ghulam v. Syed Shah Ahmed (supra)*, the Supreme Court recognised that the cause of action in a partition suit is perpetually recurring so long as the joint status subsists and the property remains unpartitioned by metes and bounds.

38) As expounded by the Supreme Court in *Corporation of Madras v. M. Parthasarathy (supra)*, the Appellate court is not powerless in situations where it finds that an issue requires determination but the record is either silent or incomplete. In such cases, the appellate court is well within its jurisdiction to adopt the appropriate statutory course, either to decide the issue itself on

the existing material or to frame the necessary issue and call for findings from the Trial Court—rather than resorting to a wholesale remand. In the absence of any evidence led by the Plaintiff and in view of the Defendants' failure to prove limitation despite opportunity, the Appellate Court was fully empowered to take appropriate steps within the framework of Order XLI, instead of directing a de novo trial.

39) In *Zarif Ahmad (Dead) through legal representatives & Anr. v Mohd Farooq (supra)* Supreme Court reiterates the settled principle that although Section 107 CPC confers power upon the appellate court to remand a matter under Order XLI Rule 24 CPC where the evidence on record is sufficient. The Court underscores that remand is not a healthy or routine practice, as it unnecessarily prolongs litigation and compels parties to wait for a final adjudication which could otherwise be avoided. The power of remand, therefore, is to be exercised sparingly and only in exceptional circumstances, such as where the trial court has disposed of the suit solely on a preliminary issue without recording evidence or without deciding the remaining issues, thereby making it impossible for the appellate court to finally adjudicate the dispute.

40) The Supreme Court in *Sirajudheen v Zeenath (supra)* has held that the scope of remand under Order XLI Rule 23 is very

limited and a distinction must be borne in mind between diverse powers of the Appellate Court to pass an order of remand. It has been categorically held that an order of remand cannot be passed mechanically or on the ipse dixit of the Court; it must be supported by a finding that the decree is liable to be reversed and that a retrial is truly necessary.

41) Applying these settled principles, remand merely on the technical ground that a specific issue of limitation was not framed, without any perverse findings, would amount to an unwarranted exercise of jurisdiction, particularly when Order XLI Rule 24 CPC empowers the Ld. Appellate Court to finally decide the matter on the existing record.

42) In the present case, the parties were fully aware of the controversy relating to limitation, have led evidence in support of their respective stands, and no prejudice is demonstrated to have been caused by the omission. A bare perusal of the issues re-framed by the Appellate Court clearly reveals that the same substantially overlap with and are comprehensively covered by the broader issues already framed by the Trial Court. The Trial Court's issues were wide enough to encompass the rival pleadings and controversies between the parties, and evidence in respect thereof has already been duly recorded. Except for the specific issue relating to limitation, no new or distinct controversy has been

introduced by the Appellate Court through the re-framing of issues. In these circumstances, directing a fresh adjudication on all such re-framed issues, despite the availability of complete and recorded evidence, was wholly unwarranted and results in a needless duplication of trial proceedings, and more seriously, enables the parties to fill lacunae in the evidence already led, thereby, impermissibly altering the outcome of the suit.

43) Accordingly, the impugned order dated 1 February 2024 cannot be sustained. The Appeal from Order deserves to be allowed. The matter is required to be remanded back to the Ld. Appellate Court for reconsideration afresh, with a direction to decide the appeal on merits after appreciating the evidence already on record and, if deemed necessary, to frame and determine the issue of limitation in accordance with law, either by itself or by adopting the limited course permissible under the Code, instead of ordering a de novo trial.

44) It is hereby clarified that this Court has not delved into the merits of the matter and that contentions of both parties are kept open.

45) In light of the above, the Appeal from Order is allowed.

:: ORDER ::

1. The Appeal from Order is allowed.
2. The order dated 1st February 2024 passed by the learned

Ad-hoc District Judge-1, Khed-Rajgurunagar, District Pune in Regular Civil Appeal No. 19 of 2020, remanding the matter to the Trial Court, is quashed and set aside.

3. The Appeal from Order 229 of 2024 is remanded back to the First Appellate Court for fresh adjudication on merits, in accordance with law, after considering the entire evidence already on record.
4. The First Appellate Court shall decide the Appeal by exercising its powers under Order XLI Rules 24 and/or 25 of the Code of Civil Procedure, as may be deemed appropriate.
5. The parties shall appear before the learned First Appellate Court on a date to be fixed by that Court.
6. The Appeal from Order and Interim Application are disposed of accordingly. There shall be no order as to costs.
7. The parties shall appear before the First Appellate Court on 2nd February 2026.

(KAMAL KHATA, J)

Judgements Relied:

1. Corporation of Madras v M. Parthasarthy(2018)9 SCC 445.
2. Uttara Praveen Thool Vs. Praveen s/o Bhanudas Thool (2014) Mh.LJ 321.
3. Kunju Kesavan v MM Philip AIR 1964 SC 164
4. Sayeda Akhtar v. Abdul Ahad (2003)7 SCC 52
5. Nedunuri Kameswaramma v Sampati Subba Rao AIR 1963 SC 88
6. Zarif Ahmad (Dead) through legal representatives & Anr. v Mohd Farooq (2015) 13 SCC 674
7. Syed Shah Ghulam v. Syed Shah Ahmed (1971) 1 SCC 597
8. Krishna Pillai v. Padmanabha Pillai (2004) 12 SCC 754
9. Sirajudheen v Zeenath 2024 17 SCC 250